

## **DRAFT RFP NOTICE TO REVIEWER**

This document is being provided for review and comment by the interested parties. The sections and attached provisions are at various stages of draft and may undergo minor or extensive revisions prior to the issuance of the RFP by the Department.

The Department invites all interested parties to comment on the draft documents by email to:

[CTDOT.Design.Build@ct.gov](mailto:CTDOT.Design.Build@ct.gov)

The Email subject line must be as follows:

**{Date} {Project number} {Proposer name} "RFP Comments"**

In the body of the email explain the comment citing specific part, page, detail heading and other related identifying information and then state the question. As an alternate the body of the email may briefly explain that the comment(s) and identifying information is attached.

REHABILITATION OF BRIDGE NOS.  
02366, 02367, AND 02369  
IN EAST HARTFORD AND  
BRIDGE NO. 00847 IN  
WILLINGTON

EAST HARTFORD AND WILLINGTON,  
CONNECTICUT

Project No. 171-431

DESIGN-BUILD PROCUREMENT  
REQUEST FOR PROPOSALS

**PART 3**  
**Contract General Provisions**

September 13, 2016

**CHAPTER 1.01**  
**DEFINITION OF TERMS AND**  
**PERMISSIBLE ABBREVIATIONS**

**1.01.01 — Definitions**

**1.01.02 — Abbreviations, Publications and Standards**

**1.01.03 — Abbreviations and Terms**

**1.01.01— Definitions:** In these specifications, unless the context requires otherwise, words of the masculine gender include the feminine and the neuter, and, when the sense so indicates, words of the neuter gender may refer to any gender.

**ATC:** Alternative Technical Concepts ("ATCs") are any technical modifications of the BTC that are proposed by the Proposer/Contractor. ATCs may be premised on deviations from the technical RFP requirements, but must be consistent with the standards set forth in the RFP and Contract documents.

**ADDENDUM:** Contract revisions developed and incorporated into the Contract after official issuance of the RFQ or RFP and before the submission of Statements of Qualifications (SOQs) or Proposals.

**AIR OPERATIONS AREA:** Any paved or unpaved airport area used or intended to be used for the unobstructed movement of aircraft, such as landings, takeoffs, and surface maneuverings.

**AWARD:** The Department's acceptance in writing of the Proposal from the responsible Proposer for the work with the Best Value Score, subject to the execution and approval by the Department of a Contract therefor and the provision by the Proposer of performance and payment bonds acceptable to the Commissioner to secure the performance thereof, and to such other conditions as may be specified by the Department or required by law.

**BTC:** Base Technical Concept, which is the set of requirements included in the RFP for the design and construction of any roadway, bridge, traffic management, drainage, utilities, and other work that defines the scope of the Project.

**BID MANUAL:** "The State of Connecticut Department of Transportation Construction Contract Bidding and Award Manual," copies of which are available from the Department's Division of Contracts and the Department's website.

**BID:** For any instances in which this term appears in the RFP or Contract, it shall be taken to mean a Proposal in the context of the RFP and the Design-Build procurement process.

**BIDDER:** For any instances in which this term appears in the RFP or Contract, it shall be taken to mean a Proposer in the context of the RFP and the Design-Build procurement process.

**CALENDAR DAY:** Every day shown on the calendar, Sundays and holidays included.

**CERTIFICATE OF COMPLIANCE:** The formal document issued at the completion of a project by the State Building Inspector's representative. The document is often referred to informally as a "Certificate of Occupancy," "C.O.C." or "C.O."

**CHANNEL:** A channel shall be interpreted to mean a natural or artificial watercourse having an average width at the bottom, after excavation, of 4 feet or more.

**COMMISSIONER:** State of Connecticut Transportation Commissioner acting directly or through a duly-authorized representative.

**CONSTRUCTION ORDER or CHANGE ORDER:** A written order signed by the Department for a contractor to perform work or provide supplies not required by the original Contract, setting forth the price therefor and the basis of payment for same.

**CONTRACT (CONTRACT DOCUMENTS):** The agreement covering the performance of the work and the furnishing of materials required for the design and construction of the Project. The Contract shall include: the signature sheet, addenda, special provisions, required federal and State provisions, supplemental specifications, labor and wage schedules and other related material, BTC plans, RFP Part 2 (Technical Provisions) as amended, all exhibits, appendices, reference documents, amendments to the foregoing, all Change Orders issued, RFP Part 3 (Terms and Conditions), and the final Proposal accepted by the Department. Capitalized terms appearing in the Contract and not otherwise defined shall have the meanings ascribed to them in Part 3 – Terms and Conditions, the final Technical

Proposal, and any other documents by which the Contractor makes commitments to the Department in the course of the procurement phase of the Design-Build process.

**CONTRACTOR:** When the word is capitalized, it refers to the party of the second part to the Contract, acting directly or through its agents or employees. When this word is not capitalized, it is to be taken in its more general sense.

**CONTRACTS OFFICE/CONTRACTS UNIT/OFFICE OF CONTRACTS:** The State of Connecticut Department of Transportation administrative unit responsible for administering general bidding and award of DOT contracts as well as the proposal phase of this Design-Build procurement process.

**DESIGN-BUILD (D-B):** A construction delivery system that provides responsibility for the delivery of design services and construction services within a single contract.

**D-B PRICE:** The Contractors' price to perform the D-B Project, accepted by the Department.

**D-B PROCESS:** The process by which the design and construction of a project are contracted for in a single contract, and by which they are accomplished through administration and implementation of that contract.

**D-B PROJECT:** A project with regard to which the design and construction are both provided for in a single contract.

**DEPARTMENT/CTDOT/CONNDOT:** State of Connecticut Department of Transportation, the Commissioner or Deputy Transportation Commissioner, acting directly or through a duly-authorized representative.

**DRAINAGE DITCH:** An unpaved, artificially-constructed open depression having an average width of less than 4 feet at the bottom, after excavation, constructed for the purpose of carrying off surface water.

**ENGINEER OF RECORD:** The Engineer of Record responsible for the final design of the Project or of a portion of the Project.

**EARLY RELEASE CONSTRUCTION (ERC):** Construction that is authorized by the Department to start prior to completion of Final Design Documents. Such authorization must be given by advance written approval from the Department.

**EXECUTION OF CONTRACT:** The date of execution of the Contract by the Department is the date on which the Department's authorized signatory signs the Contract on behalf of the Department.

**EQUAL:** A material, device, type of equipment, or method other than what is specified in the Contract, which is a recognized equivalent in substance and function to some required thing specified in the Contract, taking into account quality, workmanship, economy of operation, durability, and suitability for purposes intended, and provided that the proposed equivalent would not require or constitute a change in the Contract work.

**FIXED COSTS:** Any labor, material and equipment costs directly incurred for the item or items under consideration, which are necessary for the fulfillment of a Contract requirement and which remain constant regardless of the quantity of the work done.

**HIGHWAY:** A general term denoting a public way used for vehicular travel. When referred to in the Contract, it signifies the whole right-of-way reserved for or secured by the Department for use in constructing or maintaining a roadway and its appurtenances.

**DEPARTMENT INSPECTOR:** A duly-authorized representative of the Department, assigned to make inspections of the work performed and materials furnished by the Contractor.

**INTERVIEW LIST:** The list of Proposers to be invited for interviews by the Qualifications Review Committee for the purpose of the Committee's evaluation of the Proposers and its establishment of the Short List of Proposers.

**KEY PERSONNEL:** Principal members of the Contractor's Team identified during the Proposal process, who must work on the Project in the roles identified by the Proposer during the process, unless the Department consents to their replacement in the Project work.

**LABORATORY:** The official testing laboratory of the Department, unless the Department designates another laboratory to provide services in connection with the Project.

**MANAGER OF CONTRACTS:** The Transportation Manager of Contracts, who is the head of the Department's Division of Contracts, and whose office is located at the headquarters of the Department at 2800 Berlin Turnpike, Newington, CT 06111.

**MATERIAL:** Any substance specified in the Contract for use in the construction of the Project, including

appurtenances of products that are substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated, processed, or installed in order to be used for the Project work or become a part of the constructed Project.

**PAVEMENT STRUCTURE:** The combination of sub-base, base course and surface course placed on subgrade to support and distribute the traffic load.

**PLANS:** All drawings or reproductions of drawings pertaining to the construction or details of the Project.

**PROJECT:** All work included under one Department contract, notwithstanding the occasional use by the Department of multiple project numbers for the work included within one contract.

**PROJECT SITE (or the SITE):** The space available to the Contractor, under the Contract, for performing Project construction activities. The extent of the Project site is as indicated on the plans or elsewhere in the Contract.

**PROPOSAL:** A set of documents requested by the Department in the RFP that describes the Proposer's technical approach for the project (Technical Proposal) as well as its proposed cost ("Price Proposal") for carrying out the Project.

**PROPOSAL DEADLINE:** The time and date by which a Proposer must deliver its Proposal to the State of Connecticut Department of Transportation Office of Contract Administration in the manner required by the RFP. The Department will reject without further consideration any Proposal that it receives after the Proposal Deadline.

**PROPOSER:** A prime contractor submitting either statements of qualifications or a Proposal, depending on the phase of the procurement being referred to in the text containing the term.

**PROPOSER'S TEAM:** The team whose members are identified by the Proposer in its Statement of Qualifications, who collectively meet the requirements of the Request for Qualifications, who will participate in procurement process interviews, and who will, if the Proposer becomes the Contractor, work on the Project in the roles identified for them by the Proposer during the procurement process.

**QUALITY ASSURANCE:** (See Section 1.05.08 hereof.)

**RECLAIMED CONCRETE AGGREGATE:** Reclaimed waste consisting of crushed and graded concrete removed from pavements, structures, or buildings. Metal may be acceptable only where it is contained as reinforcement within small fragments of concrete; *e.g.*, metal projecting from concrete fragments would be unacceptable. All such material trucked from beyond the limits of the Project must be accompanied by a materials certificate and certified test report indicating that the material is environmentally acceptable and structurally sound, in accordance with Section 1.06.07, unless the source of the material is a Department Project and that source is acceptable to the Engineer.

**RECLAIMED MISCELLANEOUS AGGREGATE:** Glass-free and clinker-free reclaimed waste that has been crushed, graded and blended, as specified in the Contract, with natural crushed stone or gravel. Metal may be acceptable only where it is contained as reinforcement within small fragments of concrete; *e.g.*, metal projecting from concrete fragments would be unacceptable. All such material trucked from beyond the limits of the Project must be accompanied by a materials certificate and certified test report indicating that the material is environmentally acceptable and structurally sound, in accordance with Section 1.06.07, unless the source of the material is a Department Project and that source is acceptable to the Engineer.

**RECLAIMED WASTE:** Debris from the demolition of buildings, structures, and pavements; residue from incineration and recycled glass. Acceptable material shall include concrete, bituminous concrete, glass, ceramics, brick, pavement sub-base and base courses, and clinker from resource recovery plants. Metal may be acceptable only when it is contained within large fragments of concrete. Reclaimed waste trucked from beyond the limits of the Project must be accompanied by a materials certificate and certified test report indicating that the waste is environmentally acceptable and structurally sound, in accordance with Section 1.06.07, unless the source of the material is a Department Project and that source is acceptable to the Engineer.

**RFP:** A detailed solicitation by the Department for Proposers short-listed by the Department to submit a Technical Proposal and Price Proposal for consideration by the Department.

**RFQ:** A solicitation by the Department for prospective Proposers to submit a Statement of Qualifications for evaluation by the Department.

**ROADBED:** The graded portion of a highway, including portions within the top and side slopes, that has been prepared as a foundation for the pavement structure and shoulders.

**ROADWAY:** The portion of the highway, including shoulders, which may be used for vehicular travel within the

Project limits.

**SHOP DRAWINGS:** Drawings, including proposed details, diagrams, schedules, procedures and other supporting data, prepared by a Contractor to supplement the Contract Documents, showing all information necessary for fabrication of items for which some specific design or detail appears in the Contract.

**SHOULDER:** The portion of the roadway adjacent to the traveled way that is capable of accommodating stopped vehicles for emergency use and of providing lateral support for base and surface courses.

**SOQ:** A set of documents developed by the Proposer and submitted to the Department during Phase 1 of the selection process that outlines the Proposer's qualifications for the tasks of executing the final Project design and constructing the Project.

**SHORT LIST:** The list of contractors that will be invited to submit Proposals to the Department based on the Qualifications Review Committee's evaluations of the SOQs and on interviews with Proposers' team members.

**SPECIFICATIONS:** Contractual provisions and requirements for the performance of the Contract.

**STATE:** State of Connecticut.

**SUBCONTRACTOR:** Any individual, firm, partnership or corporation to which the Contractor sublets, with the approval of the Commissioner, any part or parts of the Project.

**SUBSTANTIAL COMPLETION:** The date at which the performance of all work on the Project has been completed except minor or incidental items, final cleanup, work required under a warranty, and repair of unacceptable work, provided that the Engineer has determined:

- A. The Project is safe and convenient for use by the public.
- B. All traffic lanes including all safety appurtenances are in their final configuration.
- C. Failure to complete the work (including repairs) excepted above has not and will not result in the deterioration of other completed Project work, and provided further that the Contract value of the work remaining to be performed, including cleanup, is less than one percent (1%) of the estimated final Contract amount.
- D. If applicable, a Certificate of Compliance has been issued.

**SUBSTITUTE:** A replacement for a specified material, device, type of equipment, or method required by the Contract, which is sufficiently different in substance and function, quality, or workmanship that its use will constitute a change in the Contract work.

**SUBSTRUCTURE:** All of that part of the bridge below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, including backwalls, wingwalls and any protective railings mounted on the wingwalls.

**SUB-SUBCONTRACTOR:** Any individual, firm, partnership or corporation with which a subcontractor contracts, with the approval of the Commissioner, for the performance of any part or parts of the Project.

**SUPERSTRUCTURE:** The entire bridge except the substructure.

**UTILITY:** Any public service company and the plant of such a company or similar facilities. Such companies include, but are not be limited to, companies selling or controlling the sale, distribution or use of water, gas, electricity, communications systems, sewers, or rail services. Such facilities include, but are not limited to, wires, cables, ducts, pipes, manholes, transformers, poles, towers, and tracks.

**WORK:** The provision of labor, materials or services necessary for or relating to the design and construction of the Project.

**WORKING DRAWINGS:** Drawings, calculations, procedures and other supporting data prepared by a Contractor, documenting the Contractor's proposed design, details, materials, construction methods and equipment for any portion of Project construction for which no specific design or detail appears in the Contract.

**1.01.02—Abbreviations, Publications and Standards:** Whenever one of the following abbreviations is used in the Contract, its meaning shall be interpreted as follows:

AA — (The) Aluminum Association, Inc.

AABC — Associated Air Balance Council

AAMA — American Architectural Manufacturers Association

AAPA — American Association of Port Authorities

AASHTO—American Association of State Highway and Transportation Officials: Wherever reference is made to an AASHTO Standard Method of Test or Standard Specification, it refers by letter and number to the method or specification published by AASHTO in the "Standard Specifications for Transportation Materials and Methods of Sampling and Testing." The edition governing the Project work shall be the edition in effect on the date that the RFP was issued to Proposers.

ABMA — American Bearing Manufacturers Association

ACGIH — American Council of Government Industrial Hygienists

ACI — ACI (American Concrete Institute) International

ADAAG — Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

AF&PA — American Forest & Paper Association

AGA — American Gas Association

AGC — (The) Associated General Contractors of America

AHA — American Hardboard Association

AHAM — Association of Home Appliance Manufacturers

AI — Asphalt Institute

AIA — (The) American Institute of Architects

AISC — American Institute of Steel Construction

AISI — American Iron and Steel Institute

AITC — American Institute of Timber Construction

A.L.I. — Automotive Lift Institute

ALSC — American Lumber Standard Committee, Incorporated

AMCA—Air Movement and Control Association International, Inc.

ANLA — American Nursery and Landscape Association

ANSI — American National Standards Institute

AOAC — AOAC International

AOSA — Association of Official Seed Analysts

APA — APA - The Engineered Wood Association

API — American Petroleum Institute

AREMA — American Railway Engineering and Maintenance-of-Way Association

ARI — Air-Conditioning & Refrigeration Institute

ARTBA — American Road and Transportation Builders Association

ASA — Acoustical Society of America

ASC — Adhesive and Sealant Council

ASCE — American Society of Civil Engineers

ASHRAE — American Society of Heating, Refrigerating and Air-Conditioning Engineers

ASME — ASME International (The American Society of Mechanical Engineers International)

ASSE — American Society of Sanitary Engineering

ASTM — American Society of Testing and Materials (ASTM International). (Wherever reference is made to an ASTM specification, test method, or practice, it refers by letter, number, or both, to standards published by ASTM International in the "ASTM Standards Source™ Database." The edition governing the Project work shall be the edition in effect on the date that the RFP was issued to Proposers.)

ATSSA — American Traffic Safety Services Association

AWI — Architectural Woodwork Institute

AWPA — American Wood-Preservers' Association

AWPI — American Wood Preservers Institute

AWS — American Welding Society (Wherever reference is made to an AWS materials specification, inspection methods, or welding procedures, it refers by section number to standards of the American Welding Society published in the applicable steel, or aluminum welding code. The edition governing the Project work shall be the edition in effect on the date that the RFP was issued to Proposers.)

AWWA — American Water Works Association

BHMA — Builders Hardware Manufacturers Association

BIA — (The) Brick Industry Association

BOCA — BOCA International, Inc.

CBM — Certified Ballast Manufacturers Association

CCRL — Cement and Concrete Reference Laboratory

CDA — Copper Development Association (The)

CGA — Compressed Gas Association

CISCA — Ceilings and Interior Systems Construction Association

CLFMI — Chain Link Fence Manufacturers Institute

ConnDOT — Connecticut Department of Transportation

CFR — Code of Federal Regulations

CGS — Connecticut General Statutes (as revised)

CISPI — Cast Iron Soil Pipe Institute

CRI — (The) Carpet and Rug Institute

CRSI — Concrete Reinforcing Steel Institute

CSI — (The) Construction Specifications Institute

CSSB — Cedar Shake & Shingle Bureau

CTI — Cooling Technology Institute

DASMA — Door and Access Systems Manufacturers Association, International

DBIA — Design Build Institute of America

DEP — Connecticut Department of Environmental Protection

DHI — Door and Hardware Institute

DOD — Department of Defense Military Specifications and Standards

DPUC — Department of Public Utility Control

EIA — Electronic Industries Alliance

EPA — Environmental Protection Agency

FAA — Federal Aviation Administration

FCC — Federal Communications Commission

FCICA — Floor Covering Installation Contractors Association  
FHWA — Federal Highway Administration  
FMG — FM Global  
FRA — Federal Railway Administration  
FS — Wherever reference is made to FS in the Contract, it refers by number, letter, or both, to the latest standard or tentative standard of the Federal Specification Unit, General Services Administration, Federal Supply Service, as to materials, specifications, or methods of testing, whichever the case may be.  
FTA — Federal Transit Administration  
HPVA — Hardwood Plywood & Veneer Association  
GA — Gypsum Association  
GANA — Glass Association of North America  
GSA — General Services Administration  
HI — Hydraulics Institute  
HPVA — Hardwood Plywood & Veneer Association  
ICC — International Code Council  
ICC-ES — ICC Evaluation Service, Inc.  
IEC — International Electrotechnical Commission  
ICEA — Insulated Cable Engineers Association, Inc.  
IEEE — (The) Institute of Electrical and Electronics Engineers, Inc.  
IESNA — Illuminating Engineering Society of North America  
IGCC — Insulating Glass Certification Council  
IGMA — Insulating Glass Manufacturers Alliance  
IMSA — International Municipal Signal Association  
IRI — HSB Industrial Risk Insurers  
ISO — International Organization for Standardization  
ITE — Institute of Traffic Engineers  
KCMA — Kitchen Cabinet Manufacturers Association  
LMA — Laminating Materials Association  
LPI — Lightning Protection Institute  
MBMA — Metal Building Manufacturers Association  
MILSPEC — Military Specification and Standards  
MMA — Monorail Manufacturers Association  
MSHA — Mine Safety and Health Administration  
MSS — Manufacturers Standardization Society of The Valve and Fittings the Valve Industry, Inc.  
MUTCD — Manual on Uniform Traffic Control Devices  
NAAMM — National Association of Architectural Metal Manufacturers  
NADCA — National Air Duct Cleaners Association  
NAIMA — (The) North American Insulation Manufacturers Association  
NBFU — National Board of Fire Underwriters

NCHRP — National Cooperative Highway Research Program

NCMA — National Concrete Masonry Association

NCPI — National Clay Pipe Institute

NEBB — Natural Environmental Balancing Bureau

NEC — National Electrical Code

NECA — National Electrical Contractors Association

NEMA — National Electrical Manufacturers Association

NEPCOAT — North East Protective Coatings Committee

NESC — National Electrical Safety Code

NETA — International Testing Association

NFPA — National Fire Protection Association

NFRC — National Fenestration Rating Council

NHLA — National Hardwood Lumber Association

NICET — National Institute for Certification in Engineering Technologies

NIOSH — National Institute of Occupational Safety and Health

NIST — National Institute of Standards and Technology

NLGA — National Lumber Grades Authority

NOAA — National Oceanic and Atmospheric Administration

NRCA — National Roofing Contractors Association

NSF — NSF International

NTMA — National Terrazzo and Mosaic Association, Inc.

OEO — Office of Equal Opportunity

OSHA — Occupational Safety and Health Administration

PCA — Portland Cement Association

PCI — Precast/Prestressed Concrete Institute

PDI — Plumbing & Drainage Institute

PTI — Post-Tensioning Institute

RMA — Rubber Manufacturers Association

SAE — SAE International

SDI — Steel Deck Institute *or* Steel Door Institute

SFPA — Southern Forest Products Association

SJI — Steel Joist Institute

SMACNA — Sheet Metal and Air Conditioning Contractors National Association

SPIB — (The) Southern Pine Inspection Bureau

SPRI — Single Ply Roofing Institute

SSPC — Where reference is made to SSPC in the Contract, it refers by number, letter, or both, to the latest standard or tentative standard specification of The Society for Protective Coatings, Formerly the Steel Structures Painting Council, as to materials specifications, methods of testing, systems, procedures, inspection or other specification pertaining to any or all phases of cleaning or painting, whichever may apply.

SWRI — Sealant, Waterproofing, & Restoration Institute

TCA — Tile Council of America, Inc.  
TIA — Telecommunications Industry Association  
TIA/EIA — Telecommunications Industry Association/Electronics Industries Alliance  
TPI — Truss Plate Institute, Inc.  
TRB — Transportation Research Board  
UFAS — Uniform Federal Accessibility Standards  
UL — Underwriters Laboratories Inc.  
USDA — United States Department of Agriculture  
USGBC — U.S. Green Building Council  
WCLIB — West Coast Lumber Inspection Bureau  
WCSC — Window Covering Safety Council  
WDMA — Window & Door Manufacturers Association  
WWPA — Western Wood Products Association

**1.01.03 — Abbreviations and Terms:** Abbreviations and terms used in the Contract are in lieu of and are to be construed in the same way as the terms or phrases following them in the list below. Those abbreviations and terms include, but are not necessarily limited to:

ABS — acrylonitrile butadiene styrene  
AC — alternating current  
ACCM Pipe or ACCMP — Asphalt-Coated Corrugated Metal Pipe  
AOEC — Area of Environmental Concern  
AWG — American Wire Gauge  
B & B — balled and burlapped  
bbl — barrel  
BCPC — Bituminous Concrete Park Curbing  
Bit. — bituminous  
Bit. Conc. — bituminous concrete  
CB — catch basin  
CCM Pipe or CCMP — coated corrugated metal pipe  
CICU — controller interface communications unit  
CLLCU — closed loop local coordination unit  
CLMU — closed loop master unit  
Conc. — concrete  
CPE Pipe or CPEP — corrugated plastic or polyethylene pipe  
CPS — centipoise second  
cu.dm — Cubic Decimeter  
cu.m — Cubic Meters  
cwt — hundredweight or one hundred (100) pounds  
DC — direct current

dist. — distillation  
dm<sup>3</sup> — Cubic Decimeter  
EW — endwall  
exc — excavation  
fi — jacking tension  
f c — specified minimum compressive strength at a specified age  
f' ci — required strength at time of transfer  
g — gram  
ga — gauge or gage  
HASP — Health and Safety Plan  
HMA — hot mix asphalt or bituminous concrete  
JMF — job mix formula  
kip — one thousand (1,000) pounds  
ksf — kips per square foot  
LED — light-emitting diode  
L.S. — lump sum  
m<sup>2</sup> — Square Meter  
m<sup>3</sup> — Cubic Meters  
mbf — one thousand(1,000)-foot board measure  
MBR — metal beam rail  
Mgal — one thousand (1,000) gallons  
MH — manhole  
MPT — Maintenance and Protection of Traffic  
Pavt. — pavement  
PCBC — precast concrete barrier curb  
PCC — Portland Cement Concrete  
PE — polyethylene  
Perf. ACCM Pipe or Perf. ACCMP — Perforated Asphalt-Coated Corrugated Metal Pipe  
Perf. CCM Pipe or Perf. CCMP — Perforated Coated Corrugated Metal Pipe  
Perf. CPE Pipe or Perf. CPEP — Perforated Corrugated Plastic or Polyethylene Pipe  
pfmd. — preformed  
PROM — programmable read only memory  
psf — pounds per square foot  
psi — pounds per square inch  
p/s — prestressed  
PVC — polyvinyl chloride  
QC – Quality Control  
QMP – Quality Management Plan

RAP — reclaimed asphalt pavement  
RC — Reinforced Concrete  
RCCE — Reinforced Concrete Culvert End  
RC Pipe or RCP — Reinforced Concrete Pipe  
SD — system detector  
sec. — second  
sol. — soluble  
sp. gr. — specific gravity  
sp. visc. — specific viscosity  
sq.m. — Square Meter  
std. — standard  
surf. — surface  
THHN — Heat-resistant thermoplastic, insulated nylon jacket, ninety (90) degrees Centigrade, six-hundred(600)-volt building wire  
THWN — Moisture- and heat-resistant thermoplastic, insulated nylon jacket, seventy-five (75) degrees Centigrade, six-hundred(600)-volt building wire  
tsf — tons per square foot  
U'drain — Underdrain  
UTCS — urban traffic control system  
UV — ultra-violet or ultra-violet light  
VOC — Volatile Organic Compound  
VT — vitrified tile  
W — watt  
WSA — Temporary Waste Stockpile Area

## CHAPTER 1.02

### SUMMARY PROPOSAL REQUIREMENTS; REQUIRED KNOWLEDGE OF CONTRACT, PROJECT, AND APPLICABLE LAWS.

#### 1.02.01 — Contract Procurement

#### 1.02.02 — Vacant

#### 1.02.03 — Vacant

#### 1.02.04 — Examination of RFP, Plans, Specifications, Special Provisions and Project Site

#### 1.02.05 — Vacant

#### 1.02.06 — Vacant

#### 1.02.07 — Vacant

#### 1.02.08 — Vacant

#### 1.02.09 — Vacant

#### 1.02.10 — Vacant

#### 1.02.11 — Vacant

#### 1.02.12 — Vacant

#### 1.02.13 — Knowledge of Applicable Laws

#### 1.02.14 — Vacant

#### 1.02.15 — Vacant

**1.02.01 — Contract Procurement:** The requirements and details of the Design-Build procurement process are described in Part 1 of the RFP. In order to be eligible for award of this Contract, a Proposer must meet the requirements of the RFP Parts One (1), Two (2), and Three (3), as well as any applicable laws and regulations of the State of Connecticut.

#### 1.02.02 — Vacant

#### 1.02.03 — Vacant

**1.02.04 — Examination of RFP, Plans, Specifications, Special Provisions and Project Site:** The Proposer is required to examine carefully the Site, the RFP, the Proposal form, plans, BTC, special provisions, specifications, supplemental specifications, and other Contract documents for the Project, as well as any permits or permit applications that are likely to affect the Contract work. The Proposer must judge for itself and satisfy itself as to the conditions to be encountered; the character, quality and quantities of the work to be performed; the materials to be furnished; and any other general requirements of the Project.

Unless otherwise specified in this Contract, the subsurface information furnished in the RFP is based on the Department's interpretation of investigations made at the specific locations indicated; and the Department gives no assurance that the conditions discovered are typical of the conditions at other Site locations or that those conditions will have remained unchanged since the field data were obtained. The Department also gives no assurance that the presence or absence of subsurface water at the time and locations of these investigations will be representative of actual conditions at the time of construction. Such subsurface information as was obtained by the Department for its use in the design of the Project will be available for inspection by Proposers through the Division of Contracts. Also, Proposers may arrange through the Division of Contracts to examine, in advance of bidding, at a location to be specified by the Department, any available samples of the materials encountered in the Department's subsurface explorations. The Contractor shall be solely responsible for all assumptions, deductions, or conclusions that it may make or derive from its examination of any Department information, document or sample relating to subsurface Site conditions. In furnishing or making available such information or materials, the Department makes no warranty or representation as to the actual conditions that may be encountered or as to the actual nature, quantities, or distributions of work that will be required from it in the course of the Project.

The Department does not intend or warrant that plan sheets furnished to the State by utility companies whose facilities may be affected by the proposed construction will show all proposed utility work that will be done by utility companies or municipal authorities or both before, during, or after the life of this Contract. In addition to the work indicated on such plan sheets, the utility companies and authorities may adjust or remove certain of their installations on or adjacent to the Site other than those indicated on the plans, or they may install facilities not so indicated.

Proposers must inform the Department in writing, at the earliest opportunity, of any and all omissions, errors, or discrepancies that the Proposer discovers in the RFP, (including the BTC plans, specifications, and other supplied or referenced documents.) Information and inquiries concerning such matters, and any other information or inquiry concerning the interpretation of the RFP or Contract, must be transmitted in writing to the Manager of Contracts, Connecticut Department of Transportation, P. O. Box 317546, Newington, Connecticut 06131-7546. **The Department cannot ensure a response to inquiries received later than ten (10) days prior to the original scheduled Proposal Deadline.** When the Department deems it warranted, responses to such inquiries relating to changes in or interpretations of the RFP (including the BTC plans, specifications, and other documents) will be issued to all Proposers in the form of addenda and made a part of the RFP and, subsequently, the Contract. Proposers are responsible for ensuring that they are aware of all addenda. Failure by the Department or postal or other courier services to deliver addenda or other information regarding an RFP does not release the Proposer from any obligations under said addenda or the RFP.

**1.02.05 — Vacant**

**1.02.06 — Vacant**

**1.02.07 — Vacant**

**1.02.08 — Vacant**

**1.02.09 — Vacant**

**1.02.10 — Vacant**

**1.02.11 — Vacant**

**1.02.12 — Vacant**

**1.02.13 — Knowledge of Applicable Laws:** Proposers shall be deemed to know and understand all federal, state and local laws, ordinances and regulations and municipal bylaws that apply in any manner to Department projects for which they bid; such legal requirements shall include, but not necessarily be limited to, those that apply to the Contract work, the equipment and materials to be used on the Project, or the treatment of individuals or classes of individuals in relationship to their involvement with the Project. A Contractor's ignorance of such requirements shall not, in any internal Department proceeding or in any claims or other legal proceeding, constitute justification for the Contractor's failure to consider such requirements in formulating a bid proposal, or for the Contractor's failure to ensure that such legal requirements are met with regard to any Department project in which that Contractor participates.

The Contractor agrees that if it should be awarded the contract for any project supported at least in part by federal funding, the Contractor will not knowingly enter into any lower-tier transaction on that project with a person (including entities) who, by virtue of federal law or regulation, or by voluntary agreement, is currently ineligible to participate in such a project, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities.

The Department expects the Contractor to obey municipal laws and regulations and cooperate with municipal officials. In some instances, however, municipal laws or regulations, or the orders of municipal officials, may conflict with necessary Project activities. In most such cases, the municipality does not have the legal power to enforce its laws and regulations upon the State or upon a State project. This is because the State is protected by its sovereign immunity. If local police or other authorities should attempt to stop the Contractor from carrying out activities that are necessary in order for the Contractor to comply with Contract requirements, the Contractor should politely inform the municipal authorities that they probably do not have jurisdiction over the State's project, and the Contractor should immediately inform the Department of the attempted interference with Project activities. If the municipal authorities continue to insist upon preventing the Contractor from carrying out Project activities, the Contractor should not defy the authorities, but, to the extent possible, should await directions from the Department as to how to respond to the attempted interference.

**1.02.14 — Vacant**

**1.02.15 — Vacant**

## CHAPTER 1.03

### INSURANCE REQUIREMENTS AND COMMENCEMENT OF PROJECT WORK

**1.03.01 — Vacant**

**1.03.02 — Vacant**

**1.03.03 — Vacant**

**1.03.04 — Vacant**

**1.03.05 — Vacant**

**1.03.06 — Vacant**

**1.03.07 -- Insurance**

**1.03.08 — Notice to Proceed and Commencement of Work**

**1.03.07 -- Insurance:** The Contractor shall carry and maintain at all times during the term of the Contract the insurance coverages required by the Contract.

If the Project includes work on or adjacent to railroad property additional insurance may be required as specified by the railroad. Please refer to the Special Provisions for any additional insurance requirements by the railroad.

1. **Worker's Compensation Insurance:** With respect to Project operations that the Contractor performs and those performed for it by subcontractors, the Contractor shall carry, and require each subcontractor to carry, Workers' Compensation insurance as required by the laws of the State of Connecticut.

Employer's Liability insurance shall be provided in amounts not less than one hundred thousand dollars (\$100,000) per accident for bodily injury by accident; one hundred thousand dollars (\$100,000) policy limit by disease; and one hundred thousand dollars (\$100,000) per employee for bodily injury by disease. Each Workers' Compensation policy shall contain the U.S. Longshoreman's and Harbor Workers' Act endorsement when work is to be performed over or adjacent to navigable water.

2. **Commercial General Liability Insurance:** With respect to Project operations that the Contractor performs and those performed for it by subcontractors, the Contractor shall carry, and require each subcontractor to carry, Commercial General Liability insurance, including Contractual Liability, Products and Completed Operations, Broad Form Property Damage, and Damage by Independent Contractors.

The Contractor shall maintain products and completed operations insurance for ongoing and completed operations for a period of one (1) year after the acceptance of the Project by the Department in accordance with Section 1.08.14. See chart below for applicable minimum coverage amounts.

Contract Amount (\$)	Minimum Single Occurrence Amount (\$)	Minimum Annual Aggregate Amount (\$)
0-2,000,000	1,000,000	2,000,000
>2,000,001-10,000,000	2,000,000	4,000,000
>10,000,000	4,000,000	8,000,000

If underground work is to be undertaken, each policy shall have coverage for and exclusions removed for "Explosion, Collapse and Underground" ("XCU").

3. **Automobile Liability Insurance:** The Contractor shall obtain automobile liability insurance covering the operation of all motor vehicles, including those hired or borrowed, that are used in connection with the Project, for all damages arising out of: (1) bodily injury to or death of all persons and/or (2) injury to or destruction of property; in any one accident or occurrence. This policy shall not be subject to an annual aggregate limitation. See chart above for applicable minimum coverage amounts.

4. **Owner’s and Contractor’s Protective Liability Insurance for and in the Name of the State:** With respect to the Contractor’s Project operations and also those of its subcontractors, the Contractor shall carry, for and on behalf of the State for each accident or occurrence resulting in (1) bodily injury to or death of persons and/or (2) injury to or destruction of property, insurance for the applicable minimum coverage amounts listed in the chart below.

Contract Amount (\$)	Minimum Single Occurrence Amount (\$)	Minimum Annual Aggregate Amount (\$)
0 - 20 Million	1,000,000	1,000,000
20 Million - 50 Million	2,000,000	2,000,000
> 50 Million	4,000,000	4,000,000

5. **Railroad Protective Liability Insurance:** When the Contract involves work within fifty (50) feet of a railroad right-of-way or State-owned rail property, the Contractor shall carry, and require each subcontractor to carry, with respect to Project operations and also those of its subcontractors, Railroad Protective Liability Insurance providing coverage of at least two million dollars (\$2,000,000) for each accident or occurrence resulting in (1) bodily injury to or death of persons and/or (2) injury to or destruction of property, and, subject to that limit per accident or occurrence, an aggregate coverage of at least six million dollars (\$6,000,000) for all damages incurred during the policy period, and having all entities falling within any of the following listed categories named as insured parties: (i) the owner of the railroad right-of-way, (ii) the owner of any railcar licensed or permitted to operate within that affected portion of railroad right-of-way, and (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way, and (iv) the State.

6. **Blasting:** When explosives are to be used in the Project, the Commercial General Liability insurance policy shall include XCU coverage, in limits the same as the per-occurrence policy limits.

7. **Protection and Indemnity Insurance for Marine Construction Operations in Navigable Waters:** If a vessel of any kind will be involved in Project work, the Contractor shall obtain the following additional insurance coverage:

A. Protection and Indemnity Coverage of at least three hundred thousand dollars (\$300,000) per vessel or equal to at least the value of hull and machinery, whichever is greater.

B. If there is any limitation or exclusion with regard to crew and employees under the protection and indemnity form, the Contractor must obtain and keep in effect throughout the Project a workers’ compensation policy, including coverage for operations under admiralty jurisdiction, with a limit of liability of at least three hundred thousand dollars (\$300,000) per accident or a limit equal to at least the value of the hull and machinery, whichever is greater, or for any amount otherwise required by statute.

8. **Builder’s Risk Insurance:** For so-called vertical construction projects, the Contractor shall maintain comprehensive replacement cost builder’s risk (completed value) insurance providing coverage for all work at the Site, including all fixtures, machinery and equipment, any heating, cooling and air-conditioning facilities constituting a permanent part of the building; and providing coverage for all portions of work located away from the Site, but intended for use at the Site. If it is determined that all or a portion of the Project is to be constructed within an area designated as a Special Flood Hazard Area, the Contractor shall maintain flood insurance therefor (no less than ten million dollars [\$10,000,000] sublimit). The State of Connecticut shall be named as Loss Payee. Equipment breakdown coverage may be sublimited to fifty percent (50%) of the Project costs.

9. **Professional Liability Insurance:** The Contractor shall secure and maintain at no direct cost to the State a Professional Liability Insurance policy, with a company authorized to do business in the State of Connecticut, for errors and omissions, in the minimum amount of three million dollars (\$3,000,000) per occurrence. The Contractor shall obtain the appropriate, proper and effective endorsement of its Professional Liability Policy to cover the Indemnification clause in this Contract as the same relates to negligent acts, errors or omissions in connection with the Contractor’s Project work. The Contractor may, at their election, obtain a policy containing a maximum two hundred and fifty thousand dollars (\$250,000.00) deductible clause, but if they should obtain a policy containing such a clause, the Contractor shall be liable, as stated above herein, to the extent of the deductible amount. The Contractor shall maintain this Professional Liability Insurance coverage for a period of at least three (3) years from the date of the Department’s acceptance of the completed Project, subject to the continued commercial availability of such insurance.

It is understood that the above insurance may not include standard liability coverage for pollution or environmental

impairment. The Contractor agrees, however, to acquire and maintain pollution and environmental impairment coverage as part of this Professional Liability Insurance, if such insurance is applicable to the Contractor's Project work.

Failure of the Contractor to maintain all insurance coverage required by this Contract shall constitute a material breach of the Contract and shall subject the Contractor to liquidated damages in the amount of ten percent (10%) of the total (adjusted) Contract price, subject to the continued commercial availability of such insurance.

The Contractor shall also require subcontractors and any other firm providing professional services related to this Contract to acquire and maintain the same levels of insurance for the same timeframes as required above, by making it a requirement of the subcontracts and other Project agreements.

**10. Umbrella Liability Insurance:** The Contractor may satisfy the minimum limits required for Commercial General Liability and Automobile Liability Insurance with equivalent Umbrella Liability Insurance. In the event that the Contractor obtains such Umbrella Liability Insurance in order to meet the minimum coverage requirements for Commercial General Liability or Automobile Liability Insurance coverage, the Umbrella Liability Insurance policy shall have an annual aggregate limit not less than twice the single occurrence limit and must specifically name the State of Connecticut as an additional insured. Specifically for Bridge Projects with a low bid price equal to or higher than eighty million dollars (\$80,000,000), the Umbrella Liability Insurance policy must have a minimum limit of at least twenty-five million dollars (\$25,000,000).

**11. Certificate of Insurance:** Before the Contract is executed, the Contractor must provide to the Department a certificate of insurance acceptable to the Commissioner and executed by an insurance company or companies satisfactory to the State of Connecticut for the insurance coverage(s) required by this Section and the Contract's Special Provisions. The Contractor shall maintain the required insurance coverages throughout the life of the Contract. The certificates of insurance must clearly include the name of the insureds and identify the projects for which they are being issued.

**12. Copies of Policies:** When requested to do so by the State, the Contractor shall, within five (5) business days of the date of the request, provide to the Department a copy or copies of all insurance policies required by the Contract. This provision shall survive the termination or other expiration of the Contract.

**13. Sovereign Immunity:** The Contractor may not assert the defense of sovereign immunity in the adjustment of claims or in the defense of any claim or suit brought against the Contractor or the State, unless the Commissioner, in writing, requests that the Contractor do so or consents in writing to its doing so.

**14. Contractor Assumes Costs:** The Contractor shall assume and pay all costs and billings for premiums, deductibles, self-insured retentions and audit charges earned and payable under the required insurance policies.

**15. State Named as Additional Insured:** The State must be named as an additional insured party for the Commercial General Liability and Automobile Liability insurance policies required by this Section or by the Contract's Special Provisions; and for any Umbrella Liability Insurance, as applicable, obtained in accordance with this Section. Each of such policies shall waive right of recovery (waiver of subrogation) against the State of Connecticut.

**16. Termination or Change of Insurance:**

A. The Contractor shall notify the Department of any cancellation of insurance carrier or change in the required insurance coverage by submitting a new insurance certificate to the Department immediately following said cancellation or change in required coverage.

B. It is the responsibility of the Contractor to provide the Department with current, updated evidence of all required insurance coverages for the duration of Contract. It is the responsibility of the Contractor to file with the Department all renewals and new certificates of insurance issued due to changes in policy terms or changes in insurance carriers; such filings must be made prior to the expiration dates on the forms already on file with the Department.

**17. VALUABLE PAPERS AND RECORDS:** The Contractor shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to the State, until the complete Project design has been accepted by the State and all original tracings, highway and bridge design computations, survey data, documents or data have been returned to the State. This will assure the State that all records, papers, maps, statistics, survey notes, all tracings, highway and bridge design and other data or documents will capable of being reestablished, recreated or restored if made unavailable by fire, theft, or other cause. When survey data is furnished by the State it shall retain in its possession duplications of all survey plans and field notes. The Contractor shall retain in its possession duplicates of all products of its work under this Contract, if and when it is necessary for the originals to be removed from its possession during the time that this Valuable Papers Insurance Policy is in force. This policy shall provide coverage in the amount of One Hundred and Fifty Thousand Dollars (\$150,000) when the insured items are in its possession and in the amount of Fifty Thousand Dollars (\$50,000)

regardless of the physical location of the insured items.

18. **Duration of Coverage.** The Contractor shall keep all the required insurance in continuous effect until the date that the Department designates for the termination of the Contractor's responsibility, as defined by Section 1.08.14.

19. **Compensation:** There shall be no direct compensation allowed the Contractor on account of any premium or other charge necessary in order to obtain and keep in effect any insurance or bonds in connection with the Project, but the cost thereof shall be considered included in the general Project costs.

**1.03.08 — Notice to Proceed and Commencement of Work:** The Contractor shall commence and proceed with the Contract work on the date specified in a written Notice to Proceed issued to it by the Department. The date specified will be no later than forty-five (45) calendar days after the date of the execution of the Contract by the Department.

If the Department does not issue a Notice to Proceed to the Contractor within the said forty-five (45) calendar days, the Contractor shall have the option of cancelling the Contract and its Project payment and performance bonds. Any failure by the Department to issue a notice to proceed, or to issue one on a timely basis, shall not, however, constitute a breach of the Contract. Neither the Contractor nor any other party may use such a failure as a basis for any claim against the Department for damages.

The Contractor shall not begin Project Design work or physical Project construction prior to the date specified for same by the Department in a Notice to Proceed, except as may be otherwise authorized by the Department in writing.

**CHAPTER 1.04**  
**SCOPE OF WORK**

**1.04.01 — Intent of Contract**

**1.04.02 — Change Orders**

**1.04.03 — Significant Changes in the Character of Work**

**1.04.04 — Differing Site Conditions**

**1.04.05 — Extra Work**

**1.04.06 — Removal and Disposal of Structures on the Site**

**1.04.07 — Rights in and Use of Materials Found on the Site**

**1.04.01 — Intent of Contract:** The intent of the Contract is to prescribe the scope and details of the design and construction work for which the Contractor has taken responsibility by executing the Contract. The Contractor is required to perform the Project work in full compliance with the Specifications, BTC plans, approved ATCs, Special Provisions, Proposal, and other Contract documents, including any Change (construction) Orders by which the Contract work is supplemented or modified subsequent to the date of the Contract. Said work includes the furnishing of the completed Project design, all materials, implements, machinery, equipment, tools, supplies, transportation, labor, and all other things necessary for the satisfactory prosecution and completion of the Project.

The Contractor shall design the Project and construct the Project in accordance with all professional engineering principles and construction practices, and in accordance with all standards identified in the Contract, in a good and workmanlike manner, free from defects. Except as otherwise specifically provided in the Contract, all materials, services and efforts necessary in order to achieve Substantial Completion and Final Acceptance on or before the respective deadlines provide herein shall be the Contractor's responsibility, and the cost of all such materials, services and efforts shall be included in the Price Proposal.

**1.04.02 -- Change Orders:** This Section sets forth the requirements for Change Orders under this Contract. The Contractor hereby acknowledges and agrees that the aggregate price proposed in the Contractor's Price Proposal (sometimes referred to herein as the "D-B Price" and any additional items listed on the bid proposal) and accepted by the Department constitutes full compensation to the Contractor for performance of the Project work, subject only to those exceptions specified in provisions of the Contract.

Change Orders may be requested by the Contractor only for the reasons outlined in the Contract. A Change Order shall not be effective for any purpose unless executed by the Department as specified herein. Change Orders must be requested by the Contractor and may be issued only for one or more of the following purposes:

1. to modify the BTC or Proposal following award of the contract;
2. to modify the scope of the Project;
3. to revise a milestone or the Contract completion date;
4. to revise the D-B Price; or
5. to revise other terms or conditions of the Contract.

All correspondence relating to Contract changes shall be in writing (except in the event of an emergency requiring immediate action).

Upon the Department's approval of the matters set forth in a potential Change Order (whether it is initiated by the Department or the Contractor), the Department shall issue a formal Change Order.

**1. Department-Initiated Change Orders:**

The Department may issue a Change Order of its own accord or require the Contractor to request a Change Order at any time without notice to any Surety or Guarantor, authorizing or requiring changes in work within the general scope of the Contract. All additions to, deletions from, or changes in the Project, as directed by Change Orders, shall be implemented under the conditions of the original Contract.

Prior to proceeding with such implementation, the parties should make every effort to agree to the terms of the subject Change Order in conformity with the provisions of the applicable Contract section, regarding, for example, the matter of whether or not additional Contract time or compensation, or the granting of a credit is warranted. If an agreement related to compensation cannot be reached prior to the need for the affected work to commence, the Department, at its sole discretion, may direct the work to proceed, and will determine the amounts of progress payments, if any, that it will make for the changes in Project work.

The Contractor shall not delay Change Order work because of a dispute over the payment for it. The Contractor will proceed with the work as directed, but shall have the right to seek relief related to disputed contractual issues, such as the amount of payment or Contract time given to it in connection with a Change Order, as specified in Section 1.05.01 of this Contract. If the Contractor wishes to pursue a contention that it should have been granted more Contract time than it was given in connection with a Change Order, it must fulfill the requirements in Section 1.08.08 for requesting a time extension, as well as any other applicable Contract requirements with regard to Project scheduling.

## **2. Contractor-Initiated Change Orders:**

If the Contractor initiates or is instructed by the Department to request a Change Order, the following requirements shall apply.

Before starting design or construction work which may change the BTC, requirements of the RFP or Proposal or which Contractor or Department considers to be outside of the original scope of the Project, the Contractor shall notify the Department or respond to the Department's instructed action by delivering to the Department's Project Manager a Proposed Change Order ("PCO") in a form acceptable to the Department. Failure to promptly notify the Department of such a situation is a cause of forfeiture of the Contractor's entitlement to requested changes or additional payments, as outlined in the Contract. Upon approval of a PCO by the Department, the Contractor shall promptly prepare and submit to the Department a corresponding Change Order Request ("COR").

In all circumstances, the Contractor must meet the following requirements before it will be entitled to revise the BTC, requirements of the RFP or proposal or request a Change Order:

The Contractor must be deemed to agree that the filing of a PCO Notice and subsequent filing of a related Request for Change Order with the Department pursuant to this Section are necessary in order to begin the administrative process for the resolution of the subject issue(s). The Contractor must be deemed to understand that it shall be required to give notice of any act, or failure to act, by the Department, or the happening of any event, thing or occurrence that it contends would give rise to a proper PCO Notice, and it must thereafter comply with the remaining requirements of this Section.

- A. Proposed Change Order: The Contractor shall deliver to the Department a PCO Notice stating that an event or situation has occurred within the scope of this Section. The first notice shall be labeled "PCO No. 1," and subsequent notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of the relevant event or situation. Timeframes for such Notices are detailed in the applicable provisions of the Contract, such as Sections 1.04.04 and 1.08.08.

The PCO Notice shall include the following information:

- a. the facts underlying the issue;
- b. the proposed resolution;
- c. reasons why the Contractor believes that the requested change is necessary;
1. whether the Contractor feels that the requested change ought to be a no-cost change or, rather, one for which additional payment should be made;
- d. details of anticipated or potential schedule impacts, and a statement of whether or not the event or situation warranting the requested change has caused, is causing, or will cause a delay on the critical path of the Project;
- e. the dates of the underlying occurrence or circumstance;
- f. an estimate of the time within which a response to the Notice is required in order to minimize cost, delay, or disruption of Project performance;

- g. a grouping together or related requested changes, if more than one is being requested, it being understood that the Department will decide which of them will be included in a single Change Order .
- B. Change Order Request: Within fourteen (14) calendar days after receipt of a PCO Notice, the Department will respond in writing to the Contractor
- a. confirming that a change has occurred; or
  - b. denying that a change has occurred; or
  - c. advising the Contractor that the necessary information has not been submitted to decide which of the above alternatives applies, and indicating the needed information and date by which it must be received for further review.

Failure of the Department to respond to a PCO notice within the prescribed timeframe shall not affect the Contractor's obligation to provide a COR within the time periods specified. Any adjustments made to the Contract shall not include increased costs or time extensions for delay(s) resulting from the Contractor's failure to provide the requested additional information.

When it has been established that a change of the Project is necessary, the Contractor shall promptly deliver a COR to the Department.

The COR(s) shall:

- a. State in detail the facts underlying the issue, the reasons why the Contractor believes that additional compensation or time will or may be due to it, and the date(s) of relevant events;
- b. Identify any documents and the substance of any oral communication relevant to the alleged change;
- c. State in detail the bases for the position that the work is not required by the Contract, with citations of the applicable Contract provision;
- d. Identify particular elements of the Contract performance for which the Contractor may seek additional compensation;
- e. Provide the data and documents that establish the necessity for and costs of the proposed change;
- f. Provide a proposed revised cost-loaded CPM showing the changes in Project time and costs that would result from implementation of the Change Order. Also provide a narrative step-by-step account and explanation of the schedule revisions that would occur if the Change Order were implemented;
- g. State in detail, consistent with Section 1.08.08, the bases for any request for a Contract time extension or for an accelerated performance schedule, ostensibly necessitated by implementation of the Change Order, ;
- h. Provide any other details and supporting information requested by the Department.

The Department may require design and construction costs to be covered by separate CORs.

Each COR shall be prepared in a form acceptable to the Department and shall meet all applicable Contract requirements. Should the Contractor not be able to meet any such requirement due to the contents of the proposed Change Order, the Contractor shall state which requirements it cannot meet and the reasons why it cannot meet them. The Contractor shall furnish, when requested by the Department, such further information and details as may be required for evaluating the relevant facts and contentions. The Contractor agrees that it shall give the Department access to the Contractor's books, records and other materials relating to its Proposal or to the D-B Project, and it shall cause its Subcontractors to do the same, so that the Department can investigate the basis for any such proposed COR. The Contractor shall provide the Department with a monthly update to each outstanding, incomplete COR, describing (1) the status of its attempts to meet any previously unfulfilled requirements related to the COR; (2) any changes in the schedule or cost projections that the Contractor previously delivered to the Department, and (3) time expended to date on activities related to the proposed COR work; and (4) the amount of time that the Contractor anticipates will be necessary for its completion of the COR-related activities for which it has requested a time extension.

If the Contractor submits a request for an extension of time as part of a COR, either for a milestone or the completion date, in accordance with Section 1.08.08 of the Contract, the Department may require the Contractor to submit an alternative COR, including a Recovery Schedule in accordance with the Contract Project Schedule Requirements set forth in the Contract.

The Department may reject CORs at any point in the review process. Once the Contractor has provided a complete COR to the Department, the Department's failure to respond thereto within twenty- one (21) calendar days of delivery of the COR shall be deemed a rejection of the COR. The Department shall have no obligation to review the back-up materials associated with any COR until the Contractor has provided it with a complete COR.

Prior to submission by the Contractor of any COR based in whole or in part on facts alleged in a submittal by any Subcontractor to the Contractor, the Contractor must have reviewed all such Subcontractor requests and determined in good faith whether or not the requests are justified as to both entitlement and amount, and the Contractor's COR shall include only those items which the Contractor certifies are justified and which meet all Contract requirements for Contractor-Initiated Change Orders. The Contractor shall include with such COR a summary of its analysis of all Subcontractor request components.

Each COR shall contain a written representation by the Contractor that the amount of time and/or compensation requested includes and takes into account all known and anticipated impacts or amounts, direct, indirect and consequential, that it may incur as a result of the events or matters giving rise to the proposed change(s).

Upon review and approval of the COR by the Department, a corresponding Change Order will be issued by the Department, incorporating the revised terms into the Contract. Except as directed by the Department, and as added by Change Order to the Contract, work that is not part of the original Project work shall be deemed to have been performed voluntarily, and the Contractor shall not be entitled to a Change Order in connection therewith.

The Contractor shall contemporaneously collect, record in writing, segregate and preserve:

- a. all data necessary to determine the costs of D-B Work that is the subject of a COR or a PCO, including specific costs associated with Design and Construction, and
- b. all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to any D-B work that is the subject of a Change Order or PCO, if the impact on the Project Schedule is in dispute between the Contractor and the Department.

The Department is relying on the Contractor to evaluate promptly, upon the occurrence of any event or situation, its potential effects on the Critical Path, whether or not the Contractor believes that additional compensation or a time extension because of that event is appropriate. If an event or situation occurs that may affect the D-B Price or the Critical Path, the Department will evaluate the situation and determine whether or not changes of the Project are necessary in order to bring it within the Department's funding and time restraints. The following matters (among others) shall be considered in determining whether or not or how the Department has been prejudiced by the Contractor's failure to provide it with timely notice of such an event or situation: the effect of the delay on alternatives available to the Department (that is, a comparison of alternatives available at the time when notice was actually given with alternatives that would have been available had notice been given within ten [10] days after occurrence of the event, or when such occurrence should have been discovered in the exercise of reasonable prudence), and the impact of any delay in the giving of such notice by the Contractor on the Department's ability to obtain and review objective information contemporaneously with the event. The creation of such prejudice by the Contractor's failure to give timely, appropriate notice of the relevant event or situation may result in denial of the COR.

#### **1.04.03 — Significant Changes in the Character of Work:**

- (1) The Department reserves the right to make, in writing, at any time during the work, such changes or alterations in the work as are necessary to satisfactorily complete the project. Such alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
- (2) If the alterations in the work significantly change the character of the work under the contract, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Department may determine to be fair and equitable.

- (3) If the alterations do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (4) The term "significant change" shall be construed to apply only to the following circumstances:
  - (a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
  - (b) If the Contract contains major items and if a major item of work, as defined elsewhere in the Contract, is increased in excess of 125% or decreased below 75% of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original Contract item quantity or in case of a decrease below 75%, to the actual amount of work performed.

**1.04.04 — Differing Site Conditions:**

- (1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site that the Contractor was not required to evaluate differ materially from those indicated in the Contract documents or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
- (2) Upon written notification, the Department will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Department will notify the Contractor of his/her determination whether or not an adjustment of the Contract is warranted.
- (3) No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.
- (4) No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.
- (5) No Contract adjustment will be allowed for subsurface or latent physical conditions differing materially from those indicated in the BTC and Contract that result from the employment of an approved ATC. The contractor will be responsible to investigate and satisfy itself of the subsurface soil conditions for all ATCs.

**1.04.05 — Extra Work:** Extra work is work made necessary by unforeseen conditions or circumstances, or by the Department's changes of the Contract, which work is necessary for completion of the Project, but was not included in the original scope of the Project. Such extra work shall be done in accordance with applicable Contract requirements, any relevant specifications and directions given by the Department. Regardless of the party that initially identified and notified the other that such work might be necessary, the Department shall make the final determination of the necessity for such extra work (based in essential part on information provided by the Contractor through the Change Order process), and shall notify the Contractor as to whether or not the Department wants the Contractor to propose a price to perform the work. Such a proposed price shall be accompanied by a detailed breakdown of anticipated costs, as further described below.

Within the time limits set forth in this chapter and other applicable chapters of the Contract, and if requested by the Department to do so, the Contractor shall advise the Department, in writing, of the compensation that the Contractor requests for the required extra work. The Contractor's request shall be itemized and reasonably detailed and shall provide all known or anticipated direct and indirect costs of the extra work, including, but not limited to, the costs of all safety and other equipment, engineering, small tools, labor, subcontractor work, consumables, field office overhead, home office overhead, insurance, bonding, and profit. The Contractor shall also, as part of its proposed price, submit a revised Contract schedule, taking into account the anticipated effects of the extra work. If the proposed schedule provides evidence that the extra work would warrant an extension of Contract time, the Contractor shall also submit a request for a time extension, in accordance with Section 1.08.08 and any other applicable section of the Contract. A negotiated Change Order shall specify scheduling requirements, time extensions and all costs of any nature arising out of the extra work covered by the Change Order.

Notwithstanding the foregoing, the Parties may mutually agree to use a multiple-step process of price negotiation, involving issuance of a Change Order that includes an estimated construction cost and provides for a revised Project to be issued after a certain design level has been reached with respect to the extra work, thus allowing a refinement and further definition of the estimated construction cost and schedule impact.

The approved Change Order, when signed by the Department, shall become a part of the Contract and shall describe the character and extent of the extra work, together with the bases for granting the Contractor any additional compensation or Contract time. If the Contractor objects to any portion of a Project submitted to it by the Department for signing, and if the Contractor is not willing to sign that Order or some portion of that Order, the Contractor must, within fifteen (15) days of its receipt of said Order, return the Order with a letter to the Department's Assistant District Engineer administering the Contract, describing specifically what portions of the Order the Contractor finds objectionable, the nature of its objections, and the bases for its objections. If the Contractor does not do so, it shall be deemed to have accepted the terms of the Change Order. If the Contractor believes that direction given by the Department changes the scope of Contract work, the Contractor shall submit a PCO with a revised schedule and a cost revision proposal in accordance with Section 1.04.02 hereof and other applicable sections of the Contract, taking all such changes into account. If the schedule is to be revised, it will be revised in accordance with Section 1.08.08 and other applicable Contract provisions.

**1.04.06 — Removal and Disposal of Structures on the Site:** Any structure on the Site that are not to remain on the Site after completion of the Project shall be removed from the Site and disposed of by the Contractor once it is no longer needed for the Project, and any such structure shall then become the property of the Contractor, except as otherwise provided by Section 1.10.07 hereof.

**1.04.07 — Rights in and Use of Materials Found on the Site:** Upon written request of the Contractor and with the written approval of the Department, subject to limitations that may be set forth within such approval, any stone, gravel, sand, topsoil or any material from existing bridge substructures, buildings, or other structures, found within the limits of the Project may be excavated or removed and used by the Contractor on the Project, provided that said materials meet the requirements of the applicable Specifications for such materials. Any materials excavated or removed shall not be taken off the Site until and unless the Department has specifically authorized such action in writing. The following conditions shall govern these matters:

1. The Department will make no additional payment for excavation or removal of materials that would be necessarily be excavated or removed in performing work called for by the BTC. The Contractor will not be charged for such materials. Unless otherwise directed by the Department, the Contractor shall, without additional compensation therefor, place in the embankment or elsewhere, as appropriate, sufficient suitable material to fill empty spaces left by said excavation or removal of materials.
2. The Department will make no additional payment for excavation or removal of materials that had to be done in order to perform Project work in accordance with the BTC; and the Contractor will be charged for such materials at a price to be negotiated with the Department. A credit in the amount of the total negotiated price shall be applied to the original D-B Price. The Contractor shall also, without additional compensation, backfill with accepted material the space that such excavated or removed materials had occupied, to the satisfaction of the Department, unless otherwise directed by the Department.

Surplus material shall not be removed from the Project until and unless the Department has specifically authorized such action in writing. The Department may determine that such material is not surplus, and may order that it be incorporated into the Project.

**CHAPTER 1.05**  
**CONTROL OF THE WORK**

**1.05.01 — Authority and Oversight**

**1.05.02 — Plans, Working Drawings, and Shop Drawings**

**1.05.03 — Conformity with Plans and Specifications**

**1.05.04 — Coordination of the Contract Documents**

**1.05.05 — Cooperation by Contractor**

**1.05.06 — Cooperation with Utilities (including Railroads):**

**1.05.07 — Coordination with Work by Other Parties**

**1.05.08 — Project Quality Assurance**

**1.05.09 — Authority of Department Inspectors**

**1.05.10 — Inspection**

**1.05.11 — Removal of Defective or Unauthorized Work**

**1.05.12 — Payrolls**

**1.05.13 — Contractor's Documentation of the Work, and Department Examination and Copying of Contractor's Records**

**1.05.14 — Termination Clauses**

**1.05.15 — Markings for Underground Facilities**

**1.05.16 — Dimensions and Measurements**

**1.05.17 — Welding**

**1.05.01 — Authority and Oversight:** The Department shall decide all questions as to interpretation of the Contract requirements. The Department shall decide on an acceptable rate of progress, on the manner of performance, and on what shall be deemed acceptable fulfillment of the Contract obligations. The Department shall have the right to determine the points at which the Contractor may begin Project work and the order in which the work shall be prosecuted in the best interests of the State within the intent of the Contract provisions.

The Department may, at any time, issue direction to the Contractor regarding a change in the Contract, clarification of a Contract provision, provisional resolution of a dispute concerning the Project, or any other Contractual or Project issue that may arise. Such direction will be given in writing (except in emergency situations in which expeditious, spoken directions may be necessary) and such directions will describe the matter in question as well as the applicable provisions of the Contract and, if pertinent, the Department's position concerning the granting of additional compensation or Contract time.

The Contractor shall immediately review any such direction and within two (2) working days of its issuance must notify the Assistant District Engineer administering the Contract, in writing, that it either accepts or objects to the Department's direction. Failure to respond within the time allowed shall constitute binding acceptance of the direction given.

If an agreement related to compensation cannot be reached prior to the need for directed work to commence, the Department, in its sole discretion, may direct the work to proceed, and it will determine the amounts of progress payments, if any, to be made for the work.

All Project work shall be subject to oversight and review by the Department's representatives. If a Project-related dispute arises between the Contractor and Department personnel assigned to the Project that those parties prove unable to resolve, the Contractor may submit a detailed written description of the dispute to the Department's Assistant District Engineer administering the Contract for further consideration.

It must be understood, though, that at no time may the Contractor, because of its disagreement with the Department, either disregard the orders of the Department or halt Project construction unless it is ordered to do so by the Department.

If the Contractor cannot resolve a Project work or pricing dispute with the Department, the Contractor's proper remedy, if any, may be a claim under Connecticut General Statutes Section 4-61, provided that the Contractor can satisfy all jurisdictional requirements of that statute. A Contractor that disregards the orders of the Department with regard to the prosecution of Project work, or who refuses to continue Project work because of a disagreement with the Department, may be subject to (1) termination of its Contract, (2) a subsequent finding that it is nonresponsible as an apparent low bidder or successful proposer for a Department contract, (3) the assessment of liquidated damages, and (4) to other adverse legal or administrative action by the Department.

If the Contractor breaches any of its obligations under this Article, or deviates from any procedure prescribed in this Article, any costs that result therefrom will not be reimbursed by the Department.

**1.05.0 2— Plans, Working Drawings, and Shop Drawings:** The Department will make every effort to review and respond to complete design submittals within the timeframe outlined in Part 2 of the Contract. All submissions from the Contractor must be complete and contain sufficient and required information so that the review can be completed and, as appropriate, the submission made to the environmental agencies on a timely basis. All submittals shall be in accordance with the Contractor's design Quality Management / Quality Control procedures as approved by the Department. Both initial submittals and resubmittals will be returned without review if the required Quality Control procedures have not been performed and the information is not provided in accordance with the approved Quality Management Plan, Quality Control Plan, and Contract requirements. With its initial baseline schedule, the Contractor shall submit to the Department a schedule for the making of required submissions. The Contractor shall avoid crowding multiple submittals into a relatively short timeframe.

**1. Plans:**

The BTC plans and the Contract specifications set forth in some detail the scope of the design and construction work required under the Contract. The BTC plans will show location, character, dimensions, and details necessary to communicate the intent and scope of the Project. If the plans do not show complete details, they will show the necessary dimensions and details which, when used along with the other Contract documents, should enable the Contractor to prepare a completed design for the Project. Part 2 of the Contract describes the review and submittal process for the Project design plans.

**2. Shop and Working Drawings:**

**A. General Requirements:**

All shop and working drawings shall be reviewed and approved by the Contractor's Designer of Record, Contractor's Lead Designer, Project Manager, Superintendent, Quality Control Manager for Construction, and Quality Control Manager for Design. Upon completion of such review and approval, all shop and working drawings shall be submitted to the Department for review as outlined below.

The Contractor shall consult with the Department in order to determine all other applicable local agencies, railroads and utilities that may need to review shop and working drawings, and the Contractor shall coordinate the preparation, submittal, and review of all such shop and working drawings to said entities. When permits are required from utilities, or other local agencies, shop and working drawings shall be submitted to them for review and approval in accordance with their requirements.

No work or fabrication covered by these shop or working drawings shall be done until the drawings have been submitted to the Department for review and any comments by the Department have been addressed to the satisfaction of the Department. The Contractor shall notify the Department of any intent to begin fabrication a minimum of thirty (30) days prior to starting such fabrication, in order to allow the Department to schedule inspection of the work. In the case of work involving a structure carrying utilities (including rail facilities), or in the case of another affected party or authority, the Contractor shall submit to the Department one additional copy of relevant working drawings for each such third party, and the Contractor must allow additional time for review and comment on said drawings by the involved third parties. Unless specified otherwise in the Contract, the Department shall be allowed at least sixty (60) working days for review of working drawings.

The Department will make no direct payment to the Contractor for furnishing any shop or working drawings, but the cost thereof shall be considered to be included in the general Project costs.

When any shop or working drawing is reviewed by the Department or an affected third party or involved authority, such review shall not relieve the Contractor from responsibility for omissions; or for errors in

dimensions, shop fits, field connections, etc.; or for providing the proper quantity of materials; or for compliance with applicable provisions of the Contract; or for the successful completion of the Project. Any comments or suggestions by the Department or outside party concerning shop drawings prepared by the Contractor shall not relieve the Contractor of any of the Contractor's responsibilities for claims by the State or by third parties, as per Article 1.07.10.

The Designer that prepares working drawings and is the Engineer of Record for the working drawings (Contractor's Designer), shall secure and maintain at no direct cost to the State a Professional Liability Insurance Policy for errors and omissions in the minimum coverage amount of one million dollars (\$1,000,000). The Department shall be named in the policy as an additional insured party thereunder. The Contractor's Designer may, at its election, obtain a policy containing a maximum two-hundred-and-fifty-thousand-dollar (\$250,000) deductible clause, but if the Contractor's Designer should obtain a policy containing such a clause, it shall be potentially liable to the Department to the extent of at least the deductible amount. The Contractor's Designer shall obtain a proper endorsement of its Professional Liability Policy sufficient and effectual to cover its potential exposure under the indemnification clause in this Contract, as the same relates to negligent acts, errors or omissions in the Project work performed by said Designer. The Contractor's Designer shall continue this liability insurance coverage, subject to the continued commercial availability of such insurance, until whichever of the following occurs or concludes on the latest date: (1) a period one to three (1-3) years from the date of acceptance of the Project by the Commissioner, as evidenced by a Certificate of Acceptance of the Project issued to the Contractor; (2) three years after the termination of the Contract; (3) until the expiration of all limitations periods governing claims that might be filed in connection with the Contract or Project; or (4) until any claims proceeding or other formal dispute proceeding in such connection has been resolved, or concluded finally, with prejudice, including all possible related appeals or appeal periods, whichever is later,.

The Contractor shall supply to the Department a certificate of insurance in accordance with Section 1.03.07 at the time that it first submits working drawings for the Project.

## **B. Shop and Working Drawings for Permanent Work:**

- i. **Shop Drawings additional requirements:** When required to do so by the Contract or the Department, the Contractor shall prepare and submit to the Department for review nine (9) copies of its shop drawings approved by the Engineer of Record a minimum of thirty (30) business days before starting any fabrication based upon them. Within those days, the Department shall be allowed a minimum of fourteen (14) business days for review and comment on the drawings from the time it receives them. Before it may begin fabrication based on the drawings, the Contractor must address all comments on them by the Department to the satisfaction of the Department. The purpose of the full thirty-day period is to allow the Department to arrange for inspection of fabrication based on the drawings once that work begins. If and when requested to do so by the Department, the Contractor shall also furnish the Department with a complete set of the working drawings on reproducible mylar or in another format acceptable to the Department. Drawings shall be submitted on twenty-two(22-)inch x thirty-four-(34-)inch (559-millimeter x 864-millimeter) sheets with an appropriate border and with a title block in the lower right-hand corner of each sheet. Procedures and other supporting data may be submitted on eight-and-a-half-(8½-)inch x eleven-(11-)inch (216-millimeter x 279-millimeter) sheets.

The Engineer of Record shall be required to review the drawings and stamp each drawing as "Approved," "Approved as Noted," or "Revise and Resubmit." Three (3) copies of each drawing stamped as "Approved" or "Approved as Noted" shall be transmitted to the Contractor for review and approval in advance of their being forwarded to the Department. Nine (9) copies of each drawing stamped as "Approved" or "Approved as noted" shall be forwarded to the Department for review in advance of fabrication as outlined above. Drawings stamped "Approved as Noted," if the Department does not take exception to them, need not be resubmitted for review, but the Engineer of Record's notes must be appropriately taken into account and implemented by the Contractor. In the case of a drawing that is reviewed and stamped "Revise and Resubmit," the Engineer of Record shall transmit two (2) copies of it to the Department for the record and two (2) copies of it to the Contractor. The latter shall take into account and implement all comments on those drawings, and shall then resubmit the required number of copies of the revised drawings for review and approval to the Engineer of Record and shall copy the Department on that transmittal. The review and transmittal requirements related to resubmissions will be the same as described above for an initial submission.

If the Contractor proposes a revision of a previously-submitted shop drawing that has been stamped "Approved" or "Approved as Noted," the Contractor shall submit nine (9) copies of the revised drawing to the Engineer of Record for its review. Any such resubmitted shop drawing shall clearly indicate, in a revision block, the date and precise nature of each revision, as well as its location on the revised drawing. The Department and involved third parties shall be allowed the same timeframe for review and comment on the revised drawings as those for initial submissions, as outlined above.

Structural steel shop drawings shall include complete details for fabrication, camber, erection, and shop assembly of members and details, schedules, procedures, special erection equipment, and diagrams showing the sequence of erection. They shall include details of cuts, connections, camber, Charpy values, FCM designations, holes, and other pertinent data. Welds shall be indicated by standard AWS symbols; and the size, length, type, and testing of each weld shall be shown. Structural steel shop drawings shall be coordinated and detailed with respect to architectural shop drawings, which require interfacing with various components.

- ii. **Working Drawings Additional Requirements:** The working drawings shall be signed, sealed and dated by a qualified Professional Engineer licensed to practice in the State of Connecticut. When required by the Contract or when ordered to do so by the Engineer, the Contractor shall prepare and submit nine (9) copies of the working drawings to the Department for review after they have been received and approved by the Contractor's Design Engineer, Superintendent, Project Manager, Quality Control Manager for Design, and Quality Control Manager for Construction.

These drawings shall be submitted the Department and other involved parties sufficiently in advance of the drawings' proposed use to allow for their review, and for any necessary revisions, without delay of the Project. If the Contractor does not submit the drawings sooner, a minimum of fourteen (14) business days from the time of their receipt by the Department shall be allowed for the Department to review and comment on the working drawings. The Contractor must address all comments to the satisfaction of the Department before starting any fabrication based on the drawings.

- iii. **Shop and Working Drawings for the Project shall include, but not be limited to the following:**

- Structural steel fabrication plans.
- Anchor bolt layouts, shop details, assembly plans, equipment lists and any other information required by the Contract.
- Traffic controls and equipment.
- Drainage and utilities materials with unique details, whether or not in conformance with Department Standards.
- Lighting equipment and controls.
- Construction phasing and traffic management plans.
- Reinforcing steel fabrication plans.
- Precast concrete bridge substructure element fabrication drawings.
- Precast concrete wall layout and fabrication plans.
- Other information specifically required by the Contract.

#### **C. Working Drawings for Temporary Works:**

Working drawings, demolition plans, and erection drawings shall be stamped by a Registered Professional Engineer licensed in the State of Connecticut. Upon their approval by the Contractor's personnel, these drawings along with any necessary supporting documentation shall be submitted sufficiently (unless specified otherwise in the Contract, at least thirty [30] calendar days) in advance of their proposed use, in order to allow for their review and any necessary revisions by the Department without delay of the Project.

Unless otherwise specified, drawings shall be submitted on twenty-two-(22-)inch x thirty-four-(34-)inch (559-millimeter x 864-millimeter) sheets with an appropriate border and with a title block in the lower right-hand

corner of each sheet. Procedures and other supporting data may be submitted on eight-and-a-half-(8½)-inch x eleven-(11)-inch (216-millimeter x 279-millimeter) sheets.

i. Working drawings for temporary works shall include, but not be limited to, the following:

- Structural steel erection plans.
- Demolition plans.
- Design and working drawings for support of excavation structures.
- Layout plans.
- Traffic control plans.
- Means and methods submittals.
- Erosion and Sedimentation Control Plans, and other submittals required by Environmental Permits or Permit applications.
- Other information specifically required by the Contract.

### **3. Ownership and Management of Documents:**

Provided the Department has made required Contract payments to the Contractor, the ownership and management of the Project documents produced by the Contractor shall be as follows:

- A. Design documents shall become the property of the Department once they have been prepared.
- B. Construction documents shall become the property of the Department upon their delivery to the Department.
- C. Information obtained or produced by the Contractor in connection with the performance of its design obligations under this Contract, including studies, technical and other reports and the like shall become the property of the Department upon the Contractor's preparation or receipt thereof.
- D. Permit Applications for Environmental Permit and Clearance documents issued by local, state, or federal agencies shall become the property of the Department upon their delivery to the Department.

**4. As-Built Drawings:** The Contractor shall maintain a set of the Project's record drawings. These as-built plans shall be updated by the Contractor each time a change is made in the Project work and when each element of the work is completed, so as to maintain a current, accurate as-built set of plans. If a change is made in the record drawings, accordingly-revised plan sets must be distributed to the Department far enough in advance of the work based upon said drawings to allow for the Department's review, comment and acceptance activities described elsewhere in the Contract. In the case of updating the plan set to reflect installed work, such plans shall be updated within seven (7) days after its installation. The as-built drawings shall be available for the Department's review and use at all times.

As a condition of Final Acceptance of the Project, the Contractor shall submit to the Department: the Project as-built record drawings depicting the final completed Project, reflecting all changes, with all of the relevant data, including, but not limited to, drainage systems, underground utilities, traffic controls, signing placement, highway alignment, grade revisions, and bridge details. The record drawings and documents shall comply with the current CTDOT Digital Project Development Manual and shall be approved by the QC Manager(s), the QC Administrator, and the Designer of Record prior to their submission to the Department for acceptance.

The Contractor shall also provide other relevant Project data such as bridge shop plans, boring logs and pile-driving records for archiving, in hard copy sets as well as in electronic PDF files.

After the Department reviews and accepts the documents, the Contractor shall submit to the Department a final set of Project documents, free of markups.

**1.05.03 — Conformity with Plans and Specifications:** All work performed and all materials furnished by the

Contractor must, in the opinion of the Department, conform to the lines, grades, cross-sections, dimensions and material requirements, including tolerances, shown on the plans and in the Specifications approved by the Department. The exception to this is a conflict between documents making up the Contract, in which case the Contractor shall seek a resolution from the Department based on the order of precedence stated in Section 1.05.04 hereof. If the Department believes that the materials or the finished product in which the materials were used do not conform to the plans and Specifications, but believes nonetheless that the finished product is acceptable, it will then determine whether or not the work will be accepted and remain in place. If the Department believes that the work should be accepted, it will issue a Change Order confirming its determination, and may provide therein for any equitable adjustment of the basis of payment that it deems appropriate.

If, in the opinion of the Department, any material provided by the Contractor, any finished product in which the materials were used, or any work performed does not comply with the plans and specifications and has resulted in an unacceptable product, the Contractor shall, at its own expense, either cure or remove and replace the unaccepted work and material, as the Department directs.

**1.05.04 — Coordination of The Contract Documents:** Each of the Contract Documents is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete set of documents necessary to complete the Project. In the event of conflict among the Contract Documents, the order of precedence shall be as follows:

**For Design Related Issues:**

1. Environmental Permits
2. Environmental Permit Applications
3. Contract Change Orders
4. Part 2 – Technical Provisions (including RFP Addenda)
5. Part 3 –Terms and Conditions (including RFP Addenda)
6. Part 1- Instructions to Proposers
7. Proposal Documents

**For Construction Related Issues:**

1. Environmental Permits
2. Environmental Permit Applications
3. Contract Change Orders
4. Design Documents, with specifications contained therein having precedence over plans.
5. Part 2 – Technical Provisions (including RFP Addenda)
6. Part 3 –Terms and Conditions (including RFP Addenda)
7. Part 1 - Instructions to Proposers
8. Proposal Documents

Notwithstanding the foregoing, in the event of a conflict within a Contract Document or set of Contract Documents with the same order of priority (including documents referenced therein), or in the event of a conflict pertaining to the order of precedence or other conflict with Contract Documents, the Department shall have the right to reasonably determine which provision applies, and if the Department makes such determination, it shall do so promptly. The Contractor shall request the Department's determination promptly upon becoming aware of such conflict.

Numerical designations of dimensions shall take precedence over dimensions calculated by applying a scale to graphic representations. Neither party to the Contract may take advantage of any obvious error or omission in the Contract. Should either party to the Contract discover such an error or omission, that party shall notify the other party of same immediately in writing. The Department will make or require of the Engineer of Record, such corrections and interpretations of the Contract as are necessary, in its judgment, to fulfill the purposes of the Contract that are evident from examining the Contract as a whole.

If the Contract includes work that does not contain an applicable standard, the Contractor shall notify the Department of that fact in writing. If the Department's documents do not contain such a standard, the Engineer of Record shall, if possible, derive an appropriate specification from applicable AASHTO Specifications or, if necessary, ASTM Specifications. If neither of those sources provides a suitable specification, the Contractor shall seek guidance from the Department with regard to the item, and the Department will formulate a reasonable specification for the item. When compliance with 2 or more standards is specified, and the standards may establish different or conflicting requirements for minimum quality levels, the Contractor shall refer such issues to the Department for a decision before proceeding with the pertinent work.

**1.05.05— Cooperation by Contractor:** The Contractor shall cooperate with Department in all matters relating to the Project, including review of the design of the Project and conducting of inspections during Project construction.

The Contractor shall have available on the Site at all times during the prosecution of the Project, a copy of the Contract plans and Specifications. The Contractor shall give the Project constant attention in order to facilitate the progress thereof, shall cooperate with the Department, and shall promptly comply with all orders and directions of the Department.

The Contractor shall at all times during Project construction have on the Site one of its employees who is thoroughly experienced in the type of work being performed, in order to supervise the work and accept directions from the Department in that regard. The Contractor shall always notify the Department of the identity of said employee representative in advance of the employee's assignment to that position. The Contractor's representative must have full authority to promptly execute and carry out the orders and directions of the Department within the terms of the Contract, and to supply such materials, equipment, tools, labor and incidentals as may be required by the Contract or by the Department.

**1.05.06 — Cooperation with Utilities (Including Railroads):** The Department may anticipate that a Project construction activity will require the removal, repair, replacement or relocation of a utility appurtenance. In such an instance, the Department, in advance of the commencement of such activity, will notify the affected utilities of the anticipated nature and timing of said activity. The Department will endeavor to have all necessary adjustments of public or private utility fixtures within or adjacent to the Project limits made as soon as practicable.

Whenever the Department determines that the relocation or adjustment of poles or the overhead plant of public or private utilities (including railroad facilities) is dependent upon the completion of certain required Contract activities, the Contractor shall complete those activities within a reasonable length of time.

Temporary and permanent changes to water lines, gas lines, sewer lines, wire lines, service connections, water or gas meter boxes, water or gas valve boxes, light standards, cableways, signals and all other utility (including railroad) appurtenances within the Site, if they are identified in the BTC, are to be made by others at no expense to the Contractor, except as otherwise provided for in the Contract.

When the Contractor is required by the Department to relocate utility appurtenances, such work will be paid for as extra work unless specific bid items for such work appear in the Contract.

If the Contractor, for its convenience or for any other reason, desires a change in the location of a water line, gas line, sewer line, wire line, service connection, water or gas meter box, valve box, light standard, cableway, signal or any other utility (including railroad) appurtenances, the Contractor shall satisfy the Department that the proposed relocation will not interfere with the Contractor's or other contractors' Project operations or their ability to perform in accordance with the Project plans, and that said change will not create an obstruction or hazard to traffic. If the requested change of location is acceptable to the Department, the Contractor shall make its own request for such relocation work to the utility companies, pipe owners or other parties likely to be involved in or affected by said work. Such relocation work shall be done at the Contractor's expense.

The Contractor shall schedule its operations in such a manner as to minimize interference with the operations of the utility companies or local governments in effecting the installation of new facilities, as shown on the plans, or the relocation of their existing facilities. The Contractor shall consider in its bid all permanent and temporary utility appurtenances in their present or relocated positions and any installation of new facilities required for the Project. The Department will not pay any additional compensation to the Contractor for delays, inconvenience or damage sustained by the Contractor due to (i) interference with Project construction caused by the location, condition or operation of utility (including railroad) appurtenances or (ii) the installation, removal, or relocation of such appurtenances; and the Contractor may not make a claim for any such compensation.

**1.05.07— Coordination with Work by Other Parties:** The Contractor shall make every effort to perform its Project work so as not to interfere with other work for the State or other parties. In the case of a dispute with another contractor working for the Department concerning their work for the State, or in the case of a conflict between their planned operations or the needs of their work or projects, the Contractor shall bring that dispute or conflict to the Department's attention, and the Department shall decide how it shall be resolved. The Department's decision shall be binding upon all of the contractors working for the Department who are involved in the matter.

The Contractor shall, as far as possible, schedule and otherwise plan and arrange its work, and place and dispose of its Project materials, so as not to interfere with the operations of other contractors working for the State. The Contractor shall, as necessary to accomplish this goal, coordinate and schedule its work in the way that will interfere least with the

work of other parties.

If the Contractor's work or activities under the Contract come into conflict with other activities or work for the State, any financial or other liability arising from such conflicts shall be the Contractor's; and the Contractor shall protect and save harmless the State from any and all damages or claims, and the costs of defending same, which may arise because of inconvenience, delay, financial hardship, or injuries caused to the Contractor or to other contractors as a result of such conflicts, unless:

- (a) The Contractor notifies the Department of such conflicts as soon as the likelihood of such a conflict becomes apparent; or, if such likelihood could not have been foreseen earlier, then as soon as the conflict becomes apparent.
- (b) The Contractor waits for direction from the Department as to how the conflict should be avoided or resolved, and the Contractor does not proceed with the work affected by the conflict until the Department has provided the Contractor with such direction.
- (c) The Contractor follows the directions given by the Department for avoiding, resolving, or minimizing the conflict.

The Contractor shall be responsible for the completion of its Contract work, regardless of any interference with, or delay of, that work that may be caused by the presence or activities of other contractors working for the State.

#### **1.05.08 Project Quality Assurance:**

##### **1. Quality Assurance Program Elements:**

Quality Assurance ("QA") is an umbrella term that includes all activities performed to ensure that the quality of a product is good and sufficient for its purpose. Q A is the responsibility of both the Contractor and the Department. To ensure that goals for Project quality will be met, the Department has established overall Quality Assurance requirements for D-B projects. This includes a Design QA Program to address quality in the design process and a Construction QA Program to ensure the quality of construction, comprised of the elements below.

##### **A. Design QA Program:**

The Design QA Program for D-B projects includes the following elements:

- Design Quality Control ("QC") system
- Design Acceptance/Approval system

##### **B. Construction QA Program:**

The Construction QA Program for D-B projects includes the following core elements:

- Construction Quality Control ("QC") system
- Construction Acceptance system
- Independent Assurance ("IA")
- Qualified/Accredited Laboratories
- Qualified/Certified Inspection & Testing Personnel

##### **2. Quality Assurance Program Responsibilities**

##### **A. Contractor Responsibilities:**

The Contractor shall establish and implement a QC System consisting of a Quality Management Plan ("QMP") and Quality Control Plans ("QC Plans"), in order to ensure that the Project work fulfills the Contract design and construction requirements. The QMP shall provide a comprehensive description of the planning, monitoring and reporting program that the Contractor will implement to ensure and document the quality of its work. The QCPs, if required, shall supplement the QMP in addressing specific activities, as outlined in the QC Plan specifications. They shall at a minimum provide additional information concerning Design & Construction QC activities, qualified /accredited laboratories, and qualified/certified inspection & testing personnel, inspections, sampling and testing, and other specific requirements for ensuring that Project work meets Contract requirements. Refer to *[Part 2 Appendix A.01]* of the Contract or RFP for the requirements regarding QMP and QC Plans.

##### **B. Department Responsibilities:**

The Department will be responsible for Design Acceptance and Approval actions, Construction Acceptance actions, and IA evaluations. One of the Department's roles in the Project is to provide verification of the quality of materials and workmanship through Acceptance inspection, sampling and testing. The Department is also responsible for IA inspection, sampling and testing in order to periodically evaluate the reliability of the Department's Acceptance personnel and equipment and the Contractor's QC personnel and equipment.

The Department has an interest in performing, and a duty to perform, due diligence on behalf of the public in auditing the processes and selected elements of the Project. The Contractor and its agents shall aid the Department as much as is practicable in its Acceptance inspection and testing, monitoring of the Contractor's Quality Control activities, and periodic IA evaluations. While the Department will be performing Acceptance inspection and testing of the work, independent of the Contractor's QC System, the Contractor maintains sole responsibility for quality, safety, compliance of the Project and Project work.

The Department intends to work cooperatively with the Contractor to establish procedures for resolving issues in a timely manner consistent with Sections 1.05.01 and 1.05.05 of the general provisions of this Contract. This topic will be discussed in detail at the Preconstruction Meeting. At each point in the course of the Project at which specific reviews, inspections or approvals by the Department are required, the Contractor shall not proceed beyond that point until the Department has completed such review, inspection or approval or waived in writing its right to review, inspect or approve the subject work or component.

The Department reserves the right to check QC laboratory testing equipment, personnel procedures and compliance assurance techniques against specified standards under the IA program. The Department also reserves the right to access the QC laboratory facilities, at no additional cost to the Department, for the purpose of observing QC testing, and to verify compliance of the testing procedures, testing techniques, and test results with the requirements of the Contractor's approved QC System. The QMP will take into account and comply with the requirements of the applicable version of the Standard Specifications relating to testing facility requirements for Department inspectors and technicians.

**1.05.09— Authority of Department Inspectors:** Inspectors employed by the Department are authorized to inspect all work done and all materials furnished for Project construction. Such inspection may extend to any part of the Project work, and to the preparation or manufacture of the materials to be used for same. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner of performing work, the inspector has the authority to reject material or stop the work until the dispute can be referred to and decided by the Department. The inspector is not authorized to revoke, alter, enlarge, relax, or release any requirements of the Contract, nor to approve nor accept any portion of the Contract work, nor to issue instructions contrary to the Contract. The inspector shall in no case act as a foreman or fulfill other duties for the Contractor. Any advice that the inspector may give to the Contractor shall not be construed as binding the Department in any way, nor as releasing the Contractor from its obligation to fulfill the terms of the Contract.

The conducting, failure to conduct, sufficiency, or accuracy of any inspection does not relieve the Contractor of its responsibility to perform the Project work properly, to monitor its work and the work of its subcontractors, and to institute and maintain Quality Control procedures appropriate for the proper execution of Project work.

**1.05.10— Department Inspection:** All materials and each part or detail of the Project work shall be subject at all times to inspection by the Department. Such inspection may include mill, plant, shop or other types of inspection; and any material furnished under the Contract is subject to such inspection. The Department shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as the Department deems necessary in order to make complete, detailed and timely inspections.

The Contractor shall always notify the Department in writing of its intention to perform work (including fabrication) on the Project, including the nature of the particular work it intends to perform, at least five (5) days before the Contractor commences that work. If, after receiving such notice, the Department decides that it needs more than five(5) days to arrange for and conduct inspection related to that work, it shall so notify the Contractor, and the Contractor shall refrain from commencing the work until the Department has arranged for such inspection. The Contractor may not commence any portion of its work without prior related inspection by the Department unless the Department agrees otherwise. In the absence of such advance agreement by the Department, any work done or material used without inspection by a Department representative may be ordered exposed for examination and testing, and then corrected or restored, all at the Contractor's expense. **In addition, the Contractor shall notify the Department in writing by 12:00 PM (noon) each Friday of all scheduled construction activities for the following week.** Scheduling is to be consistent with the critical path and milestones established by the Contract.

If, at any time before the Department's acceptance of the Project, the Department requests the Contractor to remove or uncover any portion of the Project work for inspection by the Department, the Contractor shall do so. After such inspection is completed, the Contractor shall restore such portions of the work to the condition required by the Contract as construed by the Department. If the work or material exposed and inspected under this provision proves acceptable to the Department, the Department shall pay the Contractor for any removal, uncovering or restoration of its previous Contract work that was ordered by the Department. The Department shall pay for such work as extra work. If the work or material exposed and inspected proves, in the opinion of the Department, not to meet Contract requirements, the Contractor shall be responsible for the costs of the ordered work.

**1.05.11— Removal of Defective or Unauthorized Work:** Work that does not meet the requirements of the Contract shall be remedied in a manner acceptable to the Department, or the Contractor shall remove and replace it in a manner acceptable to the Department at the Contractor's expense.

No work shall be done without appropriate lines and grades having been established in the field. Work done contrary to the instructions of the Department, work done beyond the lines shown on the plans, or extra work done without the Department's prior written direction to perform it will be considered as unauthorized, and the Department will not pay for it. The Department may order such work to be removed or replaced at the Contractor's expense.

If the Contractor fails to comply with any order of the Department made under the provisions of this Section, the Department has the authority to cause unacceptable or unauthorized work to be remedied or removed and replaced by a party or parties other than the Contractor, and to deduct the costs of such activities from any monies due or to become due to the Contractor from the Department or any other agency of the State.

**1.05.12— Payrolls:** For each week of the Project from (1) the first week during which an employee of the Contractor does Project work to which prevailing wage requirements apply, until (2) the last week on which such an employee does such work, the Contractor shall furnish to the Department certified copies of payrolls showing (a) the names of the employees who did Project work during the week that was subject to prevailing wage requirements; (b) the specific days, hours, and total numbers of hours that each employee did such Project work; and (c) the amount of money paid to each employee for such Project work. Each such payroll shall include the statement(s) of compliance with prevailing wage laws required by the State of Connecticut and, if applicable, by the federal government. Said payrolls must contain all information required by Connecticut General Statutes Section 31-53 (as it may be revised). For contracts subject to federal prevailing wage requirements, each payroll shall also contain the information required by the Davis Bacon and Related Acts (DBR). All of the payroll requirements in this Section shall also apply to the work of any subcontractor or other party that performs work on the Site, and the Contractor shall be responsible for ensuring that each such party meets said requirements.

Every Contractor or subcontractor performing Project work is required to post the relevant prevailing wage rates as determined by the State Labor Commissioner and, on federal aid projects, those determined by the United States Secretary of Labor. The wage rate determinations shall be posted in prominent and easily-accessible places on the Site.

In addition to this, the Contractor shall supply weekly certified payroll Summaries and Timesheets, meeting the content requirements of the latest version of Connecticut Department of Transportation Pamphlet for Monitoring Consultant Performance and Payment Requests for Construction Engineering and Inspection Services for all design related labor.

**1.05.13— Contractor's Documentation of the Work, and Examining and Copying of the Contractor's Records:**

1. **Contractor's Documentation:** During performance of Project work, the Contractor shall collect and preserve, in written form acceptable to the Department, all relevant data generated in the course of working on the Project. Such data may include, but not be limited to, the following:
  - A. Daily labor and equipment reports for the Contractor and each Subcontractor working on the Project, for construction related activities.
  - B. Daily occurrence logs maintained by the Contractor's Project Executive or his Designee(s) for construction-related activities, in which all significant occurrences on the Project will be recorded daily in narrative form, including:
    - i. Weather conditions.
    - ii. Events and conditions causing or threatening to cause any significant delay or disruption or interference with the progress of the Work.
    - iii. Significant injuries to person or property.
    - iv. A list of each current activity depicted on the current Project Schedule status submittal.

- v. A daily record of all labor, materials, and equipment expenses that are being incurred. For any Local Agency betterments or utility-related work, such data shall be maintained separately for each Local Agency or Utility. For Hazardous Materials Management, such data will be maintained separately for each site. If it becomes necessary to perform extra work for which a Change Order has not been executed or that may be the subject of a future claim, the Contractor will identify that work on separate daily occurrence logs.
- vi. Other documentation required by the Contract.

C. Quality Control Documentation

2. **Examining and Copying Contractor's Records:** The Contractor shall permit the Department and its duly-authorized representatives to examine and copy all documents and other records of the Contractor relevant to charges for extra work, alleged breaches of contract, or any formal or informal claim for additional compensation or for damages or other relief in connection with the Project.

The Contractor shall also permit the Department to examine and copy such of its documents and other records pertaining to the Project as the Department may deem necessary in order to determine whether or not the Contractor has complied with all laws, regulations and other governmental mandates, *e.g.*, those relating to labor compliance, affirmative action programs, and equal employment opportunity.

Examination of Escrowed Proposal documents will be in accordance with Part 1 of the RFP.

The Contractor further agrees that it shall keep all documents and other records relating to the Project at least until the expiration of three (3) years after the date of acceptance of the Project by the Department. If any claims are brought by the Department or the Contractor prior to that expiration, however, the Contractor shall keep all such records until the parties to the claims have executed a full and final release from all pending and potential claims regarding the Project. If the Contractor does not so keep any such records, it may not assert any formal or informal claim for compensation or damages or other relief that could have been substantiated or disproven to any degree with said records.

The Contractor shall ensure that the requirements of this provision are made applicable to and enforced against its subcontractors and suppliers, for the State's benefit, by including the operative language of this Section in its Project subcontracts and purchase agreements.

- 1.05.14— Termination for Convenience Clause:** The State may terminate the Contract whenever the Department determines that such termination is in the best interests of the State. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination for Convenience, specifying the extent to which performance of work under the Contract is terminated and the date upon which said termination take effect.

In the case of such a termination, the Department will pay the Contractor for the actual Contract work completed prior to the effective date of termination, or as may be agreed by the parties for any items partially completed work. No claim for loss of overhead or anticipated profits shall be allowed.

Materials obtained by the Contractor for the Project, if they have been inspected, tested as required, and accepted by the Department, but have not been incorporated into the Project construction, shall, if the Department and the Contractor so agree, be purchased by the Department from the Contractor at their actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Department, as shown by actual cost records. If the Department does not agree to purchase such materials, the Department shall reimburse the Contractor for any reasonable restocking fees and handling costs incurred by the Contractor in returning said materials to the vendor.

Termination of the Contract shall not relieve the Contractor of its responsibilities for its completed Project work, nor shall it relieve the Contractor's surety of its obligation concerning any claims arising out of the work performed, until the requirements of Sections 1.08.13 and 1.08.14 have been met.

- 1.05.15— Markings for Underground Facilities:** In compliance with Sections 16-345 through 16-359 of the Regulations of the PURA State statutes, the Contractor is responsible for notifying "Call Before You Dig" prior to commencing any excavation on the Site, including milling, reclamation or trenching; and the Contractor shall install a warning tape located a minimum of twelve (12) inches (300 millimeters) above all conduits, wires, cables, utility pipes, drainage pipes, underdrains, or other facilities, unless the excavation's depth, other underground facilities, or other engineering considerations make this minimum separation infeasible. The warning tape shall be of durable impervious material, designed to withstand extended underground exposure without material deterioration or fading of color. The tape shall be of the color assigned to the type of facility for surface markings and shall be durably imprinted with an

appropriate warning message. The tape shall also comply with the specific requirements of the utility that owns the facility.

All tapes, unless otherwise directed by the specific utility, shall be detectable with a commercial radio-type metal locator to a depth of at least three (3) feet.

Assigned colors are

Green — Storm and sanitary sewers and drainage systems, including force mains and other non-hazardous materials.

Blue — Water.

Orange — Communication lines or cables, including, but not limited to, those used in, or in connection with, telephone, telegraph, fire signals, cable television, civil defense, data systems, electronic controls and other instrumentation.

Red — Electrical power lines, electrical power conduits and other electrical power facilities, traffic signals and appurtenances and illumination facilities.

Yellow — Gas, oil petroleum products, steam, compressed air, compressed gases and all other hazardous material except water.

Brown — Other.

Purple — Reclaimed Water.

Payment for warning tapes shall be included under the D-B Lump Sum Price of the Contract.

**1.05.16— Dimensions and Measurements:** The Contractor or one of its subcontractors shall verify each dimension that is needed in order to ensure that its work complies with the Contract, and must do so before ordering any material or doing any work for which such dimension is needed. Such dimensions include, but are not limited to, dimensions given on the plans, as well as dimensions of structures in place prior to Project construction or installed in the course of construction. The Contractor or any subcontractor that finds a discrepancy or error in dimensions must report it promptly to the Department and may proceed with affected work only after receiving clarification and direction from the Department regarding matters concerning the BTC, and clarification and direction from the Designer of Record concerning matters related to the final plans. If there is a discrepancy in plans generated by the Contractor, the Contractor must notify the Department of same through a request for change and must obtain Department approval of that change. Any costs for delays, changes, cutting or repairs incurred due to the Contractor's failure to observe the above requirements shall be borne by the Contractor.

**1.05.17—Welding:** The Contractor shall ensure that all welding of materials permanently incorporated into the Project, and welding of materials used temporarily during Project construction, is performed in accordance with the following codes:

- American Welding Society (AWS) Structural Welding Code – Steel – ANSI/AWS D1.1: Miscellaneous steel items statically-loaded, including, but not limited to, columns and floor beams in buildings; railings; sign supports; cofferdams; tubular items; and modifications of existing statically-loaded structures.
- AWS Structural Welding Code – Aluminum – AWS D1.2/D1.2M: Any aluminum structure or member, including, but not limited to, brackets, light standards, and poles.
- AWS Structural Welding Code – Sheet Steel – AWS D1.3/D1.3M: Sheet steel and cold-formed members 0.18 in.(4.6 mm) or less in thickness used, for instance, as decking and stay-in-place forms.
- AWS Structural Welding Code – Reinforcing Steel – AWS D1.4/D1.4M: Steel material used in the reinforcement of cast-in-place or pre-cast Portland cement concrete elements, including, but not limited to, bridge decks, catch basin components, walls, beams, deck units, and girders.
- AASHTO/AWS – Bridge Welding Code, AASHTO/AWS D1.5/D1.5M: Steel highway bridges and other dynamically-loaded steel structures, including, but not limited to, sign supports and any other fracture-critical structures.

The edition governing the Project shall be the one that was in effect on the date that the Contract was advertised for solicitation of Proposals.

The Contractor is responsible to provide a Certified Welding Inspector in accordance with the above-noted codes. The cost for this service is to be deemed included in the general costs of the Project.

All welders must be certified by the Department in accordance with Chapter 6.03 hereof.

## **CHAPTER 1.06 CONTROL OF MATERIALS**

### **1.06.01 — Source of Supply and Quality**

### **1.06.02 — Samples and Testing**

### **1.06.03 — Storage**

### **1.06.04 — Defective Materials**

### **1.06.05 — Shipping Material**

### **1.06.06 — Vacant**

### **1.06.07 — Certified Test Reports and Materials Certificates**

### **1.06.08 — Warranties, Guarantees and Instruction Sheets**

**1.06.01 — Source of Supply and Quality:** The Contractor must obtain the Department's approval of the source of supply for each of the materials specified in the Contract before beginning delivery of such materials to the Site. If, at any time, the Department discovers that an approved source of supply does not furnish uniform materials, or if the material from any source proves unacceptable to the Department, the Department will so notify the Contractor. Thereafter, the Contractor shall furnish only Department-approved materials from other Department-approved sources for the Project, and shall use such approved materials to replace any previously-furnished materials rejected by the Department. Only materials conforming to the requirements of these specifications and approved by the Department shall be used for the Project. No material that, after approval, has in any way become unfit for use shall be used for the Project.

All permanently incorporated steel and iron used in Project construction must have been produced and fabricated in the United States. It is the express intent of this Specification to require that all manufacturing processes for all steel and iron materials and products to be used for the Project, including the coating of steel and iron, occur within the United States, with the following exceptions:

The Contractor may request, in accordance with Section 635.410(b)(4) of Title 23 CFR, approval to include a minimal amount of foreign steel in Project construction. This amount is defined as 1/10 of 1% of the total Contract price or \$2,500.00, whichever is greater. The cost of the foreign steel or iron is defined as its Contract value when delivered to the Site.

The action of applying a coating to a covered material (*i.e.*, steel or iron) is deemed a manufacturing process subject to legal Buy America requirements. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of a material subject to Buy America requirements.

Additionally, the FHWA has granted a nationwide waiver of the requirements of 23 CFR 635.410, Buy America requirements, for the production of pig iron and processed, pelletized, and reduced iron ore. Items not specifically included in the waiver remain subject to the Buy America requirements. The Contractor may request the Department to seek from the FHWA a further waiver of said requirements, but it shall be at the sole discretion of the Department whether or not to seek such a waiver.

The Department will not pay the Contractor for additional costs incurred for of its proposed design or construction due to measures that the Contractor takes to meet Buy America requirements. Materials not meeting the Buy America requirements may not be incorporated into the Project unless a related waiver has been obtained. The Contractor shall submit all requests for such waivers to the Department. If the Department determines that a waiver or pursuit of a waiver is counterproductive to the Project, the Department may unilaterally reject the request without forwarding it to the FHWA. Any time or cost expended due to pursuit of such a waiver is the sole responsibility of the Contractor. The Contractor should not assume in formulating its Price Proposal that any such waiver will be granted for the Project.

When the Contractor proposes to use materials from a source not currently approved by the Department, the Contractor shall submit as a prerequisite to consideration of source approval such evidence as the Department may request, showing that the materials from the proposed source meet the Contract requirements and will be available to the Contractor in sufficient quantity to ensure continuous and satisfactory progress of the Project.

Should it become necessary after award of the Contract for the Contractor to obtain material from sources other than those indicated in the statement on materials sources that is furnished by the Contractor prior to award, the Contractor shall furnish a supplementary statement and required samples of said proposed materials to the Department not less than ten (10) calendar days prior to placing an order for any such material.

For any material that requires more than one month for delivery, the Contractor shall provide the Department with documentary proof that said material has been ordered in sufficient time for the Contractor to complete the Project as planned. Failure to produce such documentary proof will result in a denial of any claim for a time extension based on late delivery of such material.

When one manufacturer's product is specified in the Contract, it shall be understood that this represents the standard required, but that a comparable product of another manufacturer might be considered as an equal if the Department judges it to be one, and may be approved as such by the Department, unless the plans or Special Provisions indicate that no equal shall be allowed. Should a Contractor desire to use a product that it considers equal or superior to the material specified, the Contractor shall submit to the Department a complete description of the proposed product, together with seven (7) copies of shop drawings, cuts and other descriptive literature that will inform the Department completely of the nature of such product before the Department decides whether or not to approve its use. Such approval shall not change any Contract requirement for a related Certified Test Report and Materials Certificate.

**1.06.02 — Samples and Testing:** The Contractor must obtain the Department's approval of any materials to be incorporated into the Project before beginning to use them for the Project. Approval of materials may be by certification accepted by the Department, written permission of the Department, or prior approval after documented test or inspection by the Department. The Department may decline to pay the Contractor for any Project work in which materials not approved in one of these three (3) ways outlined above has been used. Material tests or inspection for acceptance, when required, will be made by and at the expense of the Department, unless otherwise noted in these Specifications.

Department certification will be used as the basis for approval of such materials, as the Contract may specify or the Department may require. With regard to such materials, the Contractor shall furnish the Department a Certified Test Report and Materials Certificate, complying with Section 1.06.07, as may be required for each type of material. The Contractor shall bear any costs involved in furnishing the Test Report and Certificate.

If the Contractor has purchased materials for use on a previous Department project, and if they comply with the requirements of this Contract, then those materials, with the approval of the Department, may be used for the Project, provided that the Contractor, acting as the materials supplier, submits a related Materials Certificate complying with Section 1.06.07 hereof. This Materials Certificate shall further identify the project for which the material was originally purchased and shall be accompanied by a copy of the original Certificate.

The Department will also maintain a current list of approved materials and approved suppliers of those materials.

Samplings made by the Department will be as shown in the latest edition of the "Schedule of Minimum Requirements for Sampling Materials for Test," and tests will be made in accordance with the latest revision of the standard method of AASHTO or ASTM, or in accordance with other standards accepted by the Department that are in effect at the time of Proposal submissions, unless otherwise specified on the plans or in the Special Provisions. Any items not covered in the "Schedule of Minimum Requirements for Sampling Materials for Test," Special Provisions, or plans shall be sampled and tested or certified, as directed by the Department.

The Contractor shall submit to the Department's representative preliminary samples of any materials proposed for Project use, without charge by the Contractor or the producer of the materials. Samples submitted shall be taken by a representative of the Department or a commercial laboratory approved by the Department. All such materials shall be subject to inspection, testing or re-testing at the Department's direction at any time during their manufacturing, fabrication or use.

The Contractor shall furnish all required samples without charge, and provide secure facilities for their storage. The Contractor shall provide means for, and shall assist in the verification of all scales and other such measuring devices that it operates or uses in connection with the Project.

Materials will be rejected by the Department whenever, in its judgment, they fail to meet Contract requirements. The Department may accept material or a combination of materials and thereby waive noncomplying test results, provided that the following conditions are met:

1. The Department finds results of prior and subsequent series of tests of the material or materials from the same source or sources to be satisfactory.
2. The incidence and degree of nonconformance with Contract requirements are, in the Department's judgment, within

reasonable limits.

3. The Contractor, in the Department's judgment, had diligently exercised material controls consistent with good practices.

4. No adverse effect on the value or serviceability of the completed work could result from said degree of nonconformance.

The Department may, in its discretion, waive testing of minor quantities of a particular material if said material was obtained from sources that have furnished supplies of the material consistently meeting Department testing standards.

**1.06.03 — Storage:** The Contractor shall store all materials for the Project in a way that ensures that their quality and fitness for the Project will be preserved, and that the Department will have easy and prompt access to them for inspection purposes. Materials shall be kept on wooden platforms or on other hard, clean surfaces and not on the ground. When so directed by the Department, the Contractor shall store materials in a weatherproof building.

The Contractor shall not store materials in any way that would lead to a violation of Chapter 1.10 of these Specifications. Stored materials, even if they have been approved by the Department prior to their storage, must be inspected by the Department and meet all pertinent Contract requirements immediately prior to use of those materials for the Project.

**1.06.04 — Defective Materials:** Unless otherwise permitted by the Department, all materials not conforming to Contract requirements shall be considered defective, shall be rejected, and shall be removed immediately from the Site.

If deemed necessary by the Department, the Department may require the retesting of materials previously tested, approved and incorporated into the Project. If, after such retesting, the materials are found not to comply with Contract requirements, the Department may, however, allow the Contractor to leave the materials in place, provided that an equitable reduction of the payment for the materials shall be made. No rejected material, the defects of which have been subsequently corrected, shall be used until written approval for such use has been given by the Department. Should the Contractor fail to comply with any order of the Department made under the provisions of this Section, the Department shall have authority to remove and replace defective material, and to deduct the cost of such removal and replacement from any money due or to become due to the Contractor under this or any other contract that the Contractor has with the State.

When a material is fabricated or treated with another material, or when any combination of materials is assembled to form a product, any or all of which are covered by the Contract, the failure of any components of the product to comply with the Contract may be sufficient cause for the rejection of the whole combination or product.

Materials that have been shipped from approved deposits or sources of supply, but which are found to be defective upon their delivery to the Department, to the Site, or to any testing or storage site approved by the Department, shall not be used for the Project.

**1.06.05 — Shipping Material:** Any conveyance used for transporting materials must be clean when used, be in proper working condition, have a strong and substantial body that will prevent the loss of materials during transportation, and have been approved by the Department.

**1.06.06 — Vacant**

**1.06.07 — Certified Test Reports and Materials Certificates:** The Contractor shall furnish the Department with any Certified Test Report and Materials Certificate required by the Contract, the Engineer of Record, or the Department.

The Contractor shall forward the Certified Test Report and Materials Certificate to the Department and, in addition, shall deliver a copy of same to the Department's inspector at the Site. Materials for which such documentation is required may be conditionally incorporated into the Project prior to receipt by the Department of a Certified Test Report and a Materials Certificate; however, payment for such incorporated material will not be made prior to receipt of a Certified Test Report and Materials Certificate indicating that the materials meet the Contract requirements.

The Certified Test Report is a document containing a list of the dimensional, chemical, metallurgical, electrical and physical results obtained from a physical test of the subject materials, and shall certify that the materials meet the Contract requirements. Such Report shall also include the following information:

- (1) Item number and description of materials.
- (2) Date of manufacture.
- (3) Date of testing.

- (4) Name of organization to which the material has been consigned.
- (5) Quantity of material represented, such as batch, lot, group, etc.
- (6) Means of identifying the consignment, such as label, marking, lot number, etc.
- (7) Date and method of shipment.
- (8) Name of organization performing tests.

The Certified Test Report shall be signed by a duly-authorized and responsible agent for the organization manufacturing the materials, and the signature must be notarized.

A Materials Certificate is a document certifying that the materials, components and equipment furnished comply with all requirements of the Contract plans and Specifications. Such Certificate shall also include the following information:

- (1) Project for which the material has been consigned.
- (2) Name of Contractor to which material has been supplied.
- (3) Item number and description of material.
- (4) Quantity of material identified in the certificate.
- (5) Means of identifying the consignment, such as label, marking, lot numbers, etc.
- (6) Date and method of shipment.

The Materials Certificate shall be signed by a duly-authorized and responsible agent for the organization supplying the material, and the signature must be notarized.

The Contractor shall be responsible for any testing, Materials Certificates, and inspections required under the Contract or as directed by the Department.

**1.06.08 — Warranties, Guarantees and Instruction Sheets:** Manufacturers' warranties and guarantees furnished for materials used for the Project, as well as instruction sheets and parts lists supplied with Project materials, shall be delivered to the Department prior to acceptance of the Project. Each warranty or guaranty so furnished shall indicate its commencement and expiration dates.

## CHAPTER 1.07

### LEGAL RELATIONS AND RESPONSIBILITIES

**1.07.01 — Laws to Be Observed**

**1.07.02 — Permits and Licenses**

**1.07.03 — Proprietary Devices, Materials and Processes**

**1.07.04 — Restoration of Surfaces Opened Pursuant to Permit or Contract**

**1.07.05 — Load Restrictions**

**1.07.06 — Sanitary Provisions**

**1.07.07 — Public Convenience and Safety**

**1.07.08 — Use of Explosives**

**1.07.09 — Protection and Restoration of Property**

**1.07.10 — Contractor's Duty to Indemnify the State against Claims for Injury or Damage**

**1.07.11 — Opening of Section of Project to Traffic or Occupancy**

**1.07.12 — Contractor's Responsibility for Work**

**1.07.13 — Contractor's Responsibility for Adjacent Property, Facilities and Services**

**1.07.14 — Personal Liability of Representatives of the State**

**1.07.15 — No Waiver of Legal Rights**

**1.07.16 — Unauthorized Use of Area(s) within the Site**

**1.07.17 — Vacant**

**1.07.18 — Use of State Property**

**1.07.01 — Laws to Be Observed:** The Contractor at all times shall observe and comply with all laws, ordinances, government bylaws, permits, regulations, orders and decrees relating in any manner to the Contract or the conduct of the Project work. The Contractor shall indemnify and save harmless the State and all of its officers, employees and agents against any claim, fine, or other liability arising from or based on the violation of any such law, bylaw, permit, ordinance, regulation, order or decree, whether by the Contractor, its subcontractors or any of their officers, employees or agents. See the last paragraph in Section 1.02.13, however, regarding conflicts between municipal law or authorities and the requirements of Project construction.

**1.07.02 — Permits and Licenses:** Except as may be provided otherwise in a specific Contract provision or a written direction from the Department, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices required by government authorities in connection with the prosecution of the Project.

Under Connecticut law, a commercial vehicle used by a contractor or vendor in connection with the Project may be subject to Connecticut registration requirements. The CGS require such registration for any vehicle that most often is garaged in this State, or that most often leaves from and returns to one or more points within this State in the normal course of its operation. In addition, a vehicle must be registered in Connecticut if it continuously receives and discharges cargo within this State. Reciprocal registrations as allowed under CGS are acceptable for meeting the registration requirements.

Residence or domicile of the owner, lessor or lessee of the motor vehicle, or the place where the owner, lessor or lessee is incorporated or organized, shall not be a factor in determining whether or not the vehicle must be registered in this State. Failure to register a vehicle, if the law requires it, may result in issuance of a citation for such an infraction, and also may result in administrative action by the Commissioner of Motor Vehicles.

The registration requirement applies not only to the Contractor, but also to its subcontractors, suppliers, and other agents and representatives. It is the Contractor's responsibility to ensure that such entities and individuals comply with this requirement as well. The Contractor shall maintain, on the Site, records that document compliance with this requirement in connection with all vehicles used for the Project.

**1.07.03 — Proprietary Devices, Materials and Processes:** If the Contractor is required or desires to use any design, device, material or process covered by another party's license, patent, copyright, trademark or other intellectual property or legal right or interest, the Contractor shall provide for such use by suitable legal agreement with the holder of such right or interest.

The Contractor shall provide a copy of any and all such agreements to the Department.

If the Contractor is allowed, but not specifically required by the Department, to use any particular proprietor's design, device, material or process covered by such a right or interest, the Contractor and its surety shall indemnify and save harmless the State from any and all claims that may be brought against the State, and any and all costs, expenses, and damages that the State may be obligated to pay by reason of any infringement or alleged infringement relating to the use of such right, interest, design, device, material or process at any time during the prosecution or after completion of the Project.

**1.07.04 — Restoration of Surfaces Opened Pursuant to Permit or Contract:** The Contractor shall not make and shall not allow any other person to make an opening in a highway unless written and duly-authorized permission to do so has been obtained from the Department. If at any time prior to the completion of the Project, the Contractor should make such an opening without such permission, the Contractor shall perform all restoration necessary to close said opening, at its own expense, if and as the Department directs it to do so.

**Section 1.07.05 -- Load Restrictions:**

(a) Vehicle Weights: This sub-Section will apply to travel both on existing pavements and pavements under construction. The Contractor shall comply with all legal load restrictions as to vehicle size, the gross weight of vehicles, and the axle weight of vehicles while hauling materials. Throughout the duration of the Contract, the Contractor shall take precautions to ensure existing and newly-installed roadway structures and appurtenances are not damaged by construction vehicles or operations.

Unless otherwise noted in the Contract, on- and off-road equipment of the Contractor, either loaded or unloaded, will not be allowed to travel on any bridge or highway when such a vehicle exceeds the statutory limit or posted load limit of such bridge or highway. Should such movement of equipment become necessary, the Contractor shall apply for a permit from the Department for such travel, as provided in the CGS. A detailed description of the movement of any such vehicles within the Project limits or on detour routes shall be submitted to the Department for Project records. Such permit or submittal will not excuse the Contractor from liability for damage to a bridge or highway caused by its equipment.

The Contractor is subject to fines, assessments and other penalties that may be levied as a result of violations by its employees or agents of the legal restrictions as to vehicle size and weight.

(b) Storage of Construction Materials or Equipment on Structures: Equipment when not operating and material when not in the process or being installed is deemed to be storage or in storage. The Contractor shall not exceed the statutory limit or posted limit for either an existing or new structure when storing materials or construction equipment. When such restrictions are not posted on a structure, then the maximum weight of equipment or material stored in each twelve-(12-)foot-wide travel lane of any given span shall be limited to seven hundred and fifty (750) pounds per linear foot combined with a twenty-thousand- (20,000-)pound, concentrated load located anywhere within the subject lane. If anticipated storage of equipment or material exceeds the above limits, then the Contractor shall submit his proposal of storage, supported by calculations stamped by a Professional Engineer registered in the State of Connecticut, to the Department for approval at least fourteen (14) days prior to the storage operation. Operations related to structural steel demolition or erection shall follow the guidelines in Chapter 6.03 hereof. All other such submittals shall include a detailed description of the material and equipment to be stored, the quantity of storage (if it is stockpiled materials), the storage location, the gross weight (with supporting calculations if applicable), the anticipated duration of storage, and any environmental safety, or traffic protection that may be required. Storage location on the structure shall be clearly defined in the field. If structures are in a state of staged construction or demolition, additional structural analysis may be required prior to authorization of storage.

**1.07.06 — Sanitary Provisions:** The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary in order to comply with the regulations and other requirements of the State Department of Public Health or of other bodies or tribunals having jurisdiction over such matters.

**1.07.07 — Public Convenience and Safety:** The Contractor shall conduct the Project work at all times in such a

manner as to ensure the least possible obstruction to traffic. In a manner acceptable to the Department, the Contractor shall provide for the convenience and interests of the general public; the traveling public; parties residing along or adjacent to the highway or Site; and parties owning, occupying or using property adjacent to the Site, such as commuters, workers, tenants, lessors and operating agencies.

Notwithstanding any other Contract provision, the Contractor shall not close to normal pedestrian or vehicular traffic any section of road, access drive, parking lot, sidewalk, station platform, railroad track, bus stop, runway, taxiway, occupied space within a site, or occupied space within a building, except with the written permission of the Department.

All equipment, materials, equipment or material storage areas, and work areas must be placed, located, and used in ways that do not create a hazard to people or property, especially in areas open to public pedestrian or vehicular traffic. All equipment and materials shall be placed or stored in such a way and in such locations as will not create a hazard to the traveling public. In any area unprotected by barriers or other means, equipment and materials must not be stored within thirty (30) feet (9.15 meters) of any traveled way.

The Contractor must always erect barriers and warning signs between any of its work or storage areas and any area open to public pedestrian, or vehicular traffic. Such barriers and signs must comply with all laws and regulations, including any applicable codes.

The Contractor must arrange for temporary lighting, snow and ice removal, security against vandalism and theft, and protection against excessive precipitation runoff within its Project work and storage areas, and within other areas specifically designated in the Contract.

In addition to meeting other specific Contract requirements, the Contractor shall take all precautions necessary and reasonable for the protection of all persons, including, but not limited to, employees of the Contractor or the Department, and for the protection of property, until the Department notifies the Contractor in writing that the Project or the pertinent portion of the Project has been completed to the Department's satisfaction. The Contractor shall comply with the safety provisions of applicable laws, including building and construction codes, and the latest edition of the CFR. The Contractor must make available for reference in its field office, throughout the duration of the Project, a copy of the latest edition and all supplements of the CFR pertaining to OSHA.

The Contractor shall furnish to the Department's representative supervising the Project a report on any accident that occurs on the Site with regard to which the Contractor is required to report under OSHA or any other legal requirement. The Contractor shall also furnish to the Department a report regarding any other accident involving personal injury, property damage, or public liability in connection with the Project. The form and detail of such reports must be acceptable to the Department.

The Contractor shall designate a competent representative with authority to act in cooperation with the Department in the enforcement of safety provisions and promotion of safe practices on and related to the Project throughout the duration of the Project.

Under Section 1.08.06 hereof, the Department may suspend the work of the Contractor if and when the latter does not take the safety precautions required in this Section. Nothing herein shall be construed, however, to relieve the Contractor from responsibility for the prosecution of the Project as otherwise required by the Contract.

**1.07.08 — Use of Explosives:** The Contractor shall, to the greatest extent possible, avoid using explosives in proximity to existing structures. When the use of explosives is necessary for the prosecution of the Project, the Contractor shall take the utmost care not to endanger life or property.

The Contractor shall take adequate protective measures when engaging in blasting operations, and shall be responsible for any damage resulting from such operations.

The Contractor shall notify each utility with facilities in proximity to the site of such blasting operations, and any other individuals and entities that may be affected thereby, of the Contractor's intention to use explosives; and such notice shall be given sufficiently in advance of any blasting to enable such affected parties to take steps to prevent such blasting from injuring persons or property. Such notice shall not, however, relieve the Contractor from responsibility for damage resulting from its blasting operations.

**1.07.09 — Protection and Restoration of Property:** The Contractor shall not enter upon private property for any purpose without having obtained written permission to do so from the owner of such property and having provided the Department with a copy of same. The Contractor shall use every reasonable precaution to avoid disturbing or damaging public or private property, including, but not limited to, trees and monuments. The Contractor shall use suitable precautions to avoid disturbing or damaging underground or overhead structures or facilities, whether or not they are shown on the plans.

If the Project requires the moving or removal of a land monument or property marker, the Contractor shall not disturb it until a duly-authorized agent of the public or private property's owner has witnessed or recorded the monument or marker's location. The Contractor shall not move or remove such property until and unless directed to do so by the Department.

The Contractor shall not remove, cut, injure or destroy trees or shrubs until and unless the Department has given it specific written approval to do so.

The Contractor shall be responsible for all damage to property resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of executing its work, or due to its defective work or materials. When or where any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Project work, the Contractor shall restore, at its own expense, such property to a condition as close as possible to that which existed before such damage was done, by repairing, rebuilding or otherwise restoring the property, as may be directed by the Department; or the Contractor shall make good such damage in another manner acceptable to the Department. If the Contractor fails to restore such property or make good such damage in a way acceptable to the Department, the Department may, upon 48 hours' notice, proceed to have such property repaired, rebuilt or restored as it may deem necessary; and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract or under any other contract(s) that the Contractor may have with the State.

The Department shall mark the locations of underground facilities belonging to the State when given seventy-two (72) hours' notice (excluding Saturdays, Sundays, and State holidays) by the Contractor that it will be excavating or driving material into the ground near such facilities as a part of necessary Contract work. After the Department marks the location of such facilities, it will be the Contractor's responsibility to maintain the location markers until no longer needed. Repairs of State facilities located further than one (1) foot (300 millimeters) from the line delineated by such markers shall be paid for by the State.

**1.07.10 — Contractor's Duty to Indemnify the State against Claims for Injury or Damage:** The Contractor shall indemnify and save harmless the State, the Department and its officers, employees and agents from all suits, actions or claims of any character, name or description brought for or on account of any injury or damage caused to any person or property as a result of, in connection with, or pursuant to the performance of the Contract, including all costs incurred by the State in defending itself against such claims or actions, in proportion to the extent that the Contractor is held liable for same by an arbiter of competent jurisdiction. As much of any money as may be due the Contractor under the Contract as the Commissioner considers necessary for the purpose of such indemnification or holding the State harmless may be retained for such use by the State; and the Contractor's surety bonds may be held until such suit or suits, action or actions, claim or claims, as aforesaid, shall have been settled or otherwise finally resolved and until the Contractor has furnished to the Commissioner suitable evidence to that effect. Such indemnity shall not be limited by reason of any insurance coverage required under the Contract.

It is further understood and agreed by the parties hereto, that the Contractor shall not use the defense of sovereign immunity in the adjustment of claims or in the defense of any suit or formal claims proceeding, including, but not limited to, any suit or arbitration between the State and the Contractor, unless requested to do so by the State.

**1.07.11 — Opening of Section of Project to Traffic or Occupancy:** Whenever, in the opinion of the Department, any portion of the Project has been substantially completed, it may be opened to traffic or occupancy as directed by the Department. The Department's approval of any such opening shall not be held to be in any way an acceptance of such completed portion of the Project, or as a waiver of any of the provisions of these Specifications, or of any state or federal statutes, applicable building codes, or other Contract provisions. Such approval shall not constitute a basis for claims for damages due to interruptions of, or interference with, the Contractor's operations.

If repair or replacement of any portion of the Project construction becomes necessary because the Department has directed that said portion be opened to travel or occupancy prior to completion of the Contract work, the Contractor shall perform that repair or replacement. The Contractor shall perform such work at its own expense, unless the Department or an arbiter of competent jurisdiction shall determine definitely that the damage necessitating the repair or replacement was caused by equipment operated by a State employee while controlling snow or ice, or by routine State maintenance operations. In the latter cases, the State shall reimburse the Contractor for the cost of the repair or replacement. If the damage was caused by a traffic accident involving only a vehicle or vehicles that were not owned by the State and were not operated by an agent of the State, the Contractor may seek recovery from the responsible parties, but not from the State. In cases in which guiderail is damaged by the traveling public, the Department will pay the Contractor to repair or replace it.

**1.07.12 — Contractor's Responsibility for Work:** From the date for commencement of construction given in the "Notice to Proceed" until the date when the Department relieves the Contractor of responsibility for the Project, the

Project construction and Site shall be under the charge and care of the Contractor; and the Contractor shall take every necessary precaution against damage to the same or any part thereof by the action of the elements or from any other cause, including either execution or non-execution of Project work. The Contractor shall rebuild, repair, restore or otherwise make good, at its own expense, all damage to, or impairment of, any portion or purpose of the Project that results from any of the above causes prior to completion of the Project, except as provided in Section 1.07.11 hereof.

**1.07.13 — Contractor's Responsibility for Adjacent Property, Facilities and Services:** The Project work shall not commence until the Contractor has made all arrangements necessary to protect all property and facilities adjacent to the Site, including, but not limited to, those of utilities, from damaging or disruptive effects of Project operations. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of such utilities work may be kept to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption of water or utility services as a result of accidental breakage of facilities, or as a result of related facilities being exposed or unsupported, the Contractor shall promptly notify the affected utilities, law enforcement authorities, and the Department of same. The Contractor shall cooperate with said parties in the restoration of such services as promptly as possible. In no case shall the Contractor leave the Site until the interrupted service has been restored. Fire hydrants shall be kept accessible at all times, and no materials shall be left within fifteen (15) feet (five [5] meters) of any fire hydrant.

**1.07.14 — Personal Liability of Representatives of the State:** In carrying out any of the provisions of these Specifications, or in exercising any power or authority granted by the Contract or by law or regulation, the Commissioner, Department Engineers, and their authorized representatives, including consultant engineering firms and their employees, shall be subject to no liability, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

**1.07.15 — No Waiver of Legal Rights:** The Commissioner reserves the right, should the Department discover an error or omission in the Contractor's Project work, or proof of defective work done or material used by or on behalf of the Contractor for the Project, either before or after the acceptance of the Contract (even after the final payment has been made to the Contractor) to retain and apply monies owed to the Contractor under any State contract, or to claim and recover by process of law such sums, in order to correct any error or make good any omissions, errors or defects in the Project work or materials.

**1.07.16 — Unauthorized Use of Area(s) within the Site:** The use of any area within the Site for any purpose other than construction of the Project, without prior written authorization to do so from the Commissioner, is prohibited.

Any request by the Contractor for authorization of such special use must include details describing the proposed use and its purposes. If the proposed special use would involve the Contractor's making any lease or any profits in connection with the proposed use, the Contractor must enter into an agreement with the State for an equitable sharing with the State of any profits to be derived therefrom before such use may be authorized.

**1.07.17 — Vacant**

**1.07.18 — Use of State Property:** The Contractor may not use State property for any purpose or activity other than carrying out the activities required by the Contract, except with the prior written consent of the Department.

Such other activities, which require the Department's advance consent, include, but are not limited to, the establishment of staging areas, storage areas, asphalt plants, concrete plants, or gravel/borrow pits; or the conduct of screening, crushing, manufacturing, or mining operations.

Any permitted use of the Site or other State property for such other purposes or activities must be for the performance of the specific Contract only, and must be at no cost to the State. In addition, the Contractor may not assert or bring any claim or formal proceeding for damages or additional compensation based on either the approval or denial of a request to make such use of the Site or other State property.

Under no circumstances shall the bulk storage of fuel or lubricants by the Contractor or its agents be permitted on State property. Nor shall the Contractor store any hazardous materials on State property other than those that are integral to the Contractor's performance of the Contract, as allowed by the Contract or in a writing from the Department. The Contractor shall have the responsibility and duty to ensure the proper storage, handling, management and disposal of any such hazardous materials. The Contractor shall be liable to the Department for all remedial or punitive costs, damages or penalties incurred by the Department as a result of the Contractor's failure to fulfill this duty.

The Department may require environmental testing of the affected site at the Contractor's expense both prior to and

upon completion of the Contractor's permitted use of the Site or of other related State property. The Contractor shall be responsible for ensuring that such a site is restored to the condition required by the Department and that all contaminants deposited on the site by the Contractor or its agents are removed and properly disposed of. All such restoration and removal activities must be carried out at the Contractor's expense and must be carried out in accordance with the provisions of the Department's Best Management Practices, any applicable environmental permits, and all other applicable State or federal laws or regulations.

The Contractor must submit any request to use State property for a staging or storage area to the Department's District Engineer at the District Construction Office. The following information, at a minimum, must accompany such written request:

- (a) A detailed description of the proposed operation or other use of State property.
- (b) A site plan detailing the proposed location of any operations, materials, or facilities related to the requested use, including any appropriate sedimentation or erosion controls.
- (c) An area plan detailing anticipated ingress to and egress from the site of the proposed activity or the Site, as appropriate, and indicating the location of and proximity to residential or occupied buildings in the vicinity.
- (d) Copies of any related, required or affected environmental permits.
- (e) A detailed listing or description of the anticipated dates and hours of the proposed operations or activities.
- (f) Photo documentation (a minimum of twelve 8x10-in. color photographs) (i) of the preconstruction condition of each site of the proposed activities and (ii) of adjacent property at the boundaries of those areas. If the site to be used or affected is State property that lies outside of any Department right-of-way, the Contractor must also obtain from other State agencies all necessary or appropriate authorizations for the proposed use(s) of State property.

Any request by the Contractor relating to a proposed use of State property for activities other than the establishment of a construction staging or storage area must also be submitted to the Department's District Engineer at the District Construction Office and must include the same information required by (a) through (f) of the preceding paragraph. In addition, in connection with such other requests, the Contractor must submit to the Department's District Engineer:

- (g) written confirmation from the municipality or municipalities in which each affected site is located that each such municipality has no objection to the proposed use or activity; and
- (h) a license agreement with the Department, executed by the Contractor, on terms acceptable to the Department, defining the nature and scope of the proposed use or activity.

Gore areas are not available for disposal of surplus material.

For any request to establish or operate an asphalt batching or continuous mix facility, the Contractor must also provide to the Department's District Engineer at the District Construction Office a map detailing the outermost perimeter of the proposed facilities and operations, showing all related and potentially-affected structures, land uses, watercourses, wetlands, and other areas of environmental concern within one-third of a mile (.50 km) of the facility or operation perimeter. No such facility will be permitted on State property where any hospital, nursing home, school, area of environmental concern, watercourse, or residential housing exists within one-third of a mile (.50 km) of the perimeter of the facility or operation (as per Public Act 98-216).

**CHAPTER 1.08**  
**PROSECUTION AND PROGRESS**

- 1.08.01 — Transfer of Work or Contract**
- 1.08.02 — Establishment of Construction Field Office**
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- 1.08.13 — Termination of the Contractor's Responsibility**
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**1.08.01 — Transfer of Work or Contract:** The Contractor shall perform with its own organization Project work with a value under the Contract of at least 50% of the original Proposal Price. If the Contractor sublets, sells, transfers, or otherwise disposes of any part of the Contract or any portion thereof, or of the work provided for therein, or of its right, title, or interest therein, without the Commissioner's prior written consent thereto, the Contractor will not be relieved of any Contractual or other legal responsibility in connection therewith. Such an unauthorized act by the Contractor shall constitute a material breach of the Contract, and the Commissioner may, in such a case, terminate the Contract without further compensation to the Contractor. No payment will be made for such transferred work until and unless such written consent is provided by the Commissioner.

The Contractor shall not knowingly enter into any lower-tier transaction on a Department project with any person or entity which, under any federal or state law or regulation, or by voluntary agreement, is currently debarred or disqualified from bidding for construction contracts or participating in construction projects in any jurisdiction within the United States, unless after disclosure of such ineligibility, such participation is authorized by appropriate federal and State authorities, including the Commissioner.

The Contractor shall include the following alternative dispute resolution clause in all of its Project subcontracts: "For any dispute arising out of the agreement between the Contractor and a subcontractor, including claims of late payment or non-payment, that cannot be settled within sixty (60) days of the subcontractor submitting a written claim to the Contractor, either party may bring the dispute before a recognized alternative dispute resolution entity for resolution. If the parties do not agree upon a particular dispute resolution entity for that purpose, the dispute shall be resolved under the auspices and construction arbitration rules of the American Arbitration Association, or under the rules of any other alternative dispute resolution entity approved by the Department either generally or for the specific dispute. The Department may not be made a party to formal arbitration regarding such a dispute. These rights and restrictions may not be waived, and if these provisions are not included in the Contractor's subcontracts for the Project, these provisions shall nonetheless be read into them."

The Contractor shall pay each of its subcontractors for work performed by it within thirty (30) days after the Contractor receives payment from the Department for the work performed by that subcontractor. Withholding retainage by the Contractor, subcontractor or lower tier subcontractors is not allowed.

Payment for work that has been performed by a subcontractor does not eliminate the Contractor's responsibilities for that work, as stated in Section 1.07.12 hereof, "Contractor's Responsibility for Work."

Payment for work that has been performed by a subcontractor also does not release the subcontractor from its responsibility for maintenance and other types of subcontractor responsibility specified for the subcontractor's items of work. Failure of a subcontractor to meet its maintenance or warranty or responsibilities, or its responsibilities to repair, replace, or remove defective work or materials, may result in administrative action against it in connection with future Department awards or contracts.

For any dispute regarding prompt payment, the alternate dispute resolution provisions of this article shall apply.

The above requirements are also applicable to all sub-tier subcontractors, and the above provisions shall be made a part of all sub-tier subcontract agreements.

Failure of the Contractor to comply with the provisions of this Section may result in a finding that the Contractor is nonresponsible as a Proposer or apparent low bidder for a future Department contract.

**1.08.02 — Establishment of Construction Field Office:** Within ten (10) calendar days after the signing of the Contract by the parties, the Contractor shall propose in writing to the Department a field office location within one (1) mile of the Site. The proposal shall include the office telephone number to be used, the nearest utility pole number, and the distance from that pole to the proposed field office. The office shall be made acceptable to the Department and available for use, arranging for all required utility hookups, local permits and inspections, within thirty (30) days of the Department's order to establish the office. Such order shall not be deemed the "Notice to Proceed."

**1.08.03 — Prosecution of Work:** The Contractor shall commence construction operations with that part of the Project designated for such commencement in the progress schedule that it submitted to the Department, unless the Department directs the Contractor to commence with a different part of the Project. The work shall be conducted in such manner and with sufficient materials, equipment and labor as are necessary to ensure completion of the Project in accordance with the Contract within the Contract time. The Contractor shall notify the Department of its intention to commence or recommence any Project operation at least forty-eight (48) hours in advance of doing so. The Contractor shall also give the Department such advance notice of any intent to discontinue any Project operation, unless emergency conditions make it impracticable to give such notice so far in advance. The Department retains the right to disallow such commencement, recommencement or cessation of operations.

**1.08.04 — Limitation of Operations:** The Contractor shall plan and perform the Project work in such a manner and in such sequence as will cause as little interference as is practicable with vehicular, railroad, aircraft, pedestrian or other traffic. The Contractor shall cooperate with any utilities involved in or affected by Project operations and shall schedule its operations in accordance with Section 1.05.06 hereof.

The Contractor shall give the Department a minimum of seven (7) days advance written notice of any proposed changes in Project activities that will alter vehicular traffic patterns, cause lane shifts, detours, temporary closure of a lane, permanent closure of a lane or lane reductions, or cause any other alteration of railroad, aircraft, pedestrian or other traffic patterns, affecting usage of such transportation facility by the traveling public. This advance notification will allow the Department to publish news releases and provide public radio announcements to inform the public of revised traffic patterns or possible traffic delays. Failure of the Contractor to provide such timely notice will subject the Contractor to stop-work orders until such time as the seven (7) days of required notice have run from either the Contractor's giving of the relevant notice or the Department's discovery of the pertinent alteration of traffic conditions.

**1.08.05 — Personnel and Equipment:** The Contractor shall assign to the Project only personnel who are careful and competent. All persons performing Project work shall have the skill, experience, and licenses necessary for performing their work well and lawfully.

During the Procurements Process, the Contractor designated Key Personnel for the Project. Prior to the start of Project work, the Contractor shall designate other needed supervisory staff in other positions to be responsible for the Project work. Should any removal of a designated person from the Project or from his or her designated position or area of responsibility become necessary, the Contractor shall notify the Department of that necessity and shall identify a replacement. The Contractor is cautioned that special qualification and notice requirements apply to Key Personnel. These requirements are described in Part 1- Instructions to Proposers or elsewhere in the Contract. For other personnel appointments, the Contractor shall provide proof that the person meets any applicable requirements of this Section.

The Department may demand the removal from the Project, or from his or her Project position or responsibilities, of any person employed by the Contractor who is, in the opinion of the Department, guilty of misconduct on a Department project or incompetent or negligent in fulfilling duties or performing work on a Department project, or who neglects or

refuses to comply with directions given by the Department in connection with such a project. Following such a demand for his removal, such person shall not work again on any Department project without the prior written consent of the Department. Should the Contractor, following such a demand for removal, continue to employ or again employ such person on any Department project without the required consent of the Department, the Commissioner may withhold all estimated payments that are or may become due to the Contractor for the Project, or the Department may shut down the Project until the Contractor has complied with the Department's orders concerning that person. Such shut down shall in no way relieve the Contractor of any obligation contained in the Contract or entitle the Contractor to pursue a related claim or Change Order. Once the Department tells the Contractor that it is satisfied with the Contractor's response to its directions in such a matter, the Contractor shall promptly resume Project work.

The use of convict labor on projects funded in whole or in part by the federal government is prohibited.

The Contractor shall furnish whatever equipment is necessary for the Project as is necessary for the Project to be constructed in a manner and at a rate of progress acceptable to the Department. Equipment used on any portion of the Project shall not be used in any way that may cause injury to the roadway, adjacent property, or other property on or adjacent to the Site, unless such damage is allowed by the Department for the purposes of the Project.

The Contractor may submit to the Department a request to use equipment or methods other than those specified in the Contract. If the Department so directs, there shall be a trial of such equipment or methods. If the results of the trial are satisfactory to the Department, the Contractor may begin using the proposed equipment or method on the Project. Failure of the equipment or method to meet the specified Contract performance standards in the course of the specified trial, or, in the absence of such standards, a failure to perform to the satisfaction of the Department, shall be cause for rejection of any such method or equipment, and any work performed with either. Such rejected equipment or work shall be removed immediately from the Site and, if deemed necessary by the Department, replaced with acceptable equipment or work.

**1.08.06 — Suspensions of Work Ordered by the Department:** The Department may suspend the Project wholly or in part, for such period or periods as it considers to be in the best interests of the State, including, but not limited to, the interests of public necessity, convenience, or safety.

During such periods of suspension, and subject to any related directions from the Department, the Contractor shall store all materials and equipment in a way that will keep them from obstructing or impeding the traveling public unnecessarily, and that will keep the materials from being damaged; shall take all reasonable measures to prevent damage to the work performed; shall provide suitable drainage of the roadway and Site by opening ditches, shoulder drains, etc., as appropriate; and shall erect temporary structures to prevent damage to the Project or to other property, and to protect the public, where and when necessary.

The Contractor shall maintain the Site and all roadways and buildings thereon in a condition safe for travel or occupancy, as appropriate, and shall maintain all required barricades, signs, and lights during the period of suspension:

(1) If the Department orders in writing that performance of all or any portion of the Project shall be suspended, or that it shall be delayed for an unreasonable period of time (*i.e.*, a period not customary or of a kind that an experienced contractor should know might occur on a construction project, or inherent in the nature of construction activities), and if the Contractor believes that additional compensation or Contract time is due to it as a result of such suspension or delay, the Contractor shall submit to the Department in writing a request for a related Contract adjustment within seven (7) calendar days of the Contractor's receipt of a direction from the Department to recommence work. The request shall set forth the specific reasons and support for the requested adjustment. No Contract adjustment will be made unless the Contractor has submitted the request for adjustment within the time prescribed.

(2) If the Department agrees that the expenditures of time or money required for the Contractor's performance of the Contract have increased as a result of such suspension or delay, and if the suspension or delay was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any tier, and was not caused by weather, the Department will make an appropriate adjustment of Contract time or payment (excluding any profit) under the Contract. The Department will give the Contractor written notice of its determination as to whether or not the requested adjustment of the Contract is warranted and will be made.

(3) In addition to the other limits and requirements imposed by this Section, no Contract adjustment will be allowed under this Section to the extent (a) that the Project work would have been suspended or delayed by any cause other than the ones identified appropriately in the Contractor's request, or (b) that the requested adjustment or type of adjustment is provided for or barred by another provision of the Contract.

(With regard to Items 1-4, refer to 23 CFR, Section 635.109, "Standardized Changed Condition Clauses," Required

FHWA Contract Specification.)

**1.08.07 — Determination of Contract Time:** Unless the Contract requires Project completion by a specified date, the number of calendar days allowed for the completion of the Project will be fixed by the Department and will be stated in the Contract (the "Contract time"). If at any time the Contractor submits a schedule showing completion of the work more than thirty (30) calendar days in advance of the Contract time or completion date, the Department will issue a no-cost CO revising the allowable Contract time or completion date to that shown on the Contractor's schedule.

When the Contract time is on a calendar-day basis, it shall be the number of consecutive calendar days stated in the Contract, INCLUDING the days from December 1 through March 31 of each year. The Contract time will begin on the date for commencement of Project work designated in the Notice to Proceed and will be tallied on a consecutive-day basis, including all Saturdays, Sundays, holidays, and non-work days.

The total elapsed time in calendar days, computed as described above, from the commencement date specified in the Notice to Proceed to the date of "Substantial Completion" in the Department's "Notice of Substantial Completion" shall be considered as the time used for performance of the Contract work.

Suspension involving cessation of work on all items, except minor construction not affected by or connected with the cause of suspension, shall be considered total suspension. In case of a total Project suspension ordered by the Department, not due to any fault of the Contractor, the elapsed time during which the Project is suspended will not be charged against the Contract time. Work of an emergency nature ordered by the Department for the convenience or safety of the public or the protection of the Project work, if performed during a period of total suspension, will not be charged against Contract time. No such time allowance will be granted in case of partial suspension; provided, however, that the Contractor may request and the Department may grant permission to perform specific limited operations during such a partial suspension, in which case Contract time chargeable for those operations shall be negotiated and agreed to in writing before such operations may commence.

**1.08.08 — Extension of Time:** The Contractor may present to the Department a request in writing for an extension of Contract time if the time necessary for completion of the Project has been increased due to extra or added work or delays resulting from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, except for weather or seasonal conditions (unless extraordinary and catastrophic). Such causes include, but are not restricted to, natural catastrophes, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, the presence of utility facilities (including railroads), fires, strikes, floods, or delays by suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or such suppliers.

The Contractor's plea that insufficient Contract time was allowed under the Contract before commencement of the Project is not a valid reason for extending the Contract time. Requests for an extension of time, with adequate substantiation, must be presented within sixty (60) calendar days from the event that is the basis of the request or from the first effect of such an event on the Project. The Contractor will be responsible for providing all the documentation necessary to support the reasonableness of the request for additional Contract time.

Such requests will be granted by the Department to the extent that it deems to be fair and reasonable. Requests will not be considered if based on delays caused by conditions existing at the time that the bids were received and of which the Contractor might reasonably be expected to have had full knowledge at that time, or upon delays caused by failure on the part of the Contractor to anticipate properly the requirements of the Project as to materials, labor or equipment. For all Project delays or time increases, except as provided below, additional Contract time is the sole remedy that the Contractor may have, and such periods of additional Contract time shall be deemed "Non-Compensable Delays." For delays caused by the State in its Contractual capacity, the Contractor may, in addition to a time extension, request additional compensation to reimburse it for damages sustained as a direct result of such delay, and such periods of extended Contract time may be deemed "Compensable Delays."

The period of a compensable delay is limited as follows: (1) it may not include time more than sixty (60) days prior to the Department's having received written notice from the Contractor, with adequate substantiation, of its intent to claim damages for the delay; and (2) it may not include periods of delay for which the State was responsible, but during which the Contractor experienced concurrent delays for which the State was not responsible. Damages for periods of Project delay for which the State had sole responsibility shall be limited to the increased costs incurred by the Contractor (which shall not include anticipated or lost profits), which the Contractor substantiates and which the Contractor shows were caused by such delays.

Each time extension request shall be accompanied by a preliminary analysis meeting the requirements of this Section and of the Scheduling Specifications in the Contract. A documented final analysis of the alleged impacts shall be submitted to the Department no later than thirty (30) calendar days after the end of the delay. During the time between

the preliminary and final analysis, the delay shall be documented in updated Project progress schedules submitted in accordance with the Contract requirements.

Any time entitlement analysis submitted as support for a time extension shall be accompanied by an alternate recovery schedule meeting the requirements of this Section and the Contract scheduling requirements. A narrative shall accompany the recovery schedule, clearly indicating any proposed overtime hours or additional shifts incorporated in the Recovery Schedule. The Department shall have final approval over the use of overtime hours and additional shifts and shall have the right to require that overtime hours and additional shifts be used in order to minimize time extensions, if the Department deems it to be in its best interests to do so.

**1.08.09 — Failure to Complete Work on Time:** Time is an essential element of the Contract. Since the prosecution of the Project may obstruct traffic, interfere with business, and otherwise inconvenience the public, it is important that the Project be pressed vigorously to completion. The cost to the Department of the administration of the Contract, including engineering, inspection and supervision, will also be increased as the time for Project completion is lengthened. Therefore, for each calendar day that any work shall remain uncompleted after the Contract time has expired, the per diem sum of liquidated damages specified in the Contract shall be deducted from any money due to the Contractor. Liquidated damages are not a penalty, but are a reasonable estimate of the damages caused by such delay, especially items such as extended costs for the use of consultant inspectors, trafficmen, and the like during the period of delay.

The Department has the right to deduct the amount of the liquidated damages assessed against the Contractor from any estimated payment for work performed under the Contract or under any other State contract, or from any other sums owed by the State to the Contractor; or to claim and recover such sums by process of law.

**1.08.10 — Termination of Contract for Cause:** The Commissioner may give notice in writing to the Contractor and its surety of any delay, neglect, or default of the Contractor that the Commissioner believes has occurred, including one or more of the following:

1. Failure to begin the Project or portion thereof as called for in a Notice to Proceed or approval for construction.
2. Failure to perform the Project with sufficient personnel, equipment or materials to ensure timely Project completion.
3. Unsuitable performance of the Project or failure to perform Project work in accordance with the Contract.
4. Failure or refusal to remove or correct work rejected by the Department.
5. Discontinuance of suitable prosecution of the Project for a period of seventy-two (72) consecutive hours, excluding Sundays and holidays, without written authorization to do so from the Department.
6. Failure to recommence discontinued work within forty-eight (48) hours (excluding Sundays and holidays) after being ordered to do so by the Department.
7. Insolvency, filing for bankruptcy, or any act or occurrence that may render the Contractor financially incapable of completing the Project.
8. Failure to satisfy any final judgment for a period of thirty (30) calendar days.
9. Making of any assignment for the benefit of creditors.
10. Violation of any provisions of the Contract.
11. Any other cause which, in the judgment of the Commissioner, warrants termination, including, but not limited to, violations of the antitrust or criminal laws, and attempts to deceive or defraud the Department.

If the Contractor or surety within a period of ten (10) calendar days after such notice does not proceed in conformance with the directions set forth in the notification, or fails to present a remedial plan of operation satisfactory to the Commissioner, then the Commissioner may, at his discretion, order the surety to complete the Project or, without violating the Contract, take the right to control and prosecute the Project out of the hands of said Contractor and surety. No termination of the Contract for such cause will be deemed to have occurred, however, unless the Commissioner himself or herself (and not merely a designated representative of his or hers) expressly declares it in a writing to the Contractor.

In the case of such a termination for cause, the Department may acquire or rent whatever materials or equipment are necessary in order to complete the Project and may seize and use for purposes of the Project (with any appropriate compensation to the Contractor) any material or equipment that the Contractor acquired or purchased expressly for the

Project in accordance with a specific Contract requirement.

The Department may also enter into an agreement, either by negotiation or public letting, for the completion of the Contract according to the terms and provisions thereof, or use such other methods or combinations thereof as in the Commissioner's opinion shall be required or desirable for the completion of the Contract in an acceptable manner. All costs and charges incurred by the Department, in connection with completing the Project under the Contract, or as a result of the Contractor's default, shall be deducted from any monies due to or which may become due to the Contractor. In case such expense exceeds the sum that would have been payable under the Contract, then the Contractor and the surety shall be liable for, and shall pay to the State, the amount of the excess.

**1.08.11 — Final Cleaning-Up:** The Project will not be considered complete and will not be accepted until the rights-of-way, borrow pits, and all other ground, both public and private, occupied by the Contractor in connection with the Project has been cleared of all surplus and discarded materials, rubbish and temporary structures. The Contractor must drain all borrow pits when practicable. All property, both public and private, that has been damaged during the prosecution of the Project, shall be restored by the Contractor to an appearance and condition acceptable to the Department.

All ditches, waterways, drainage structures and culverts constructed under the Contract shall be cleaned and cleared of obstructions by the Contractor, and shall be left in a condition acceptable to the Department. When so directed by the Department, the Contractor shall clean all existing ditches, waterways, drainage structures and culverts of obstructions resulting from Project operations.

**1.08.12 — Final Inspection:** If the Department determines that the Project may be substantially complete, it will hold a Semi Final Inspection as is practicable.

Substantial Completion shall be deemed to have been achieved when all of the following have occurred:

- All requirements of all milestones have been completed.
- The Contractor has corrected all defects, deficiencies, and deviations identified during interim Milestone acceptance inspections with respect to the Project and the Department has notified the Contractor in writing of its acceptance of such corrections; provided that final clean-up shall not be required to be performed as a condition precedent to Substantial Completion.
- All Non-Conformance Reports ("NCRs") shall be closed out, with completion of any required rework or replacement.
- The Contractor has received all applicable governmental approvals required by the RFP or Contract.
- The entire Site (or a portion of it in the case of a partial semi-final inspection) is ready to be fully opened for public travel, including all completed cross-section features (to be open for usage around the clock thereafter).
- A Semi-Final inspection meeting has been held and it has been determined by the Department that the subject work is substantially complete.

After the Semi-Final Inspection is held and the Department determines that the requirements for Substantial Completion have been satisfied, the Department will issue to the Contractor a "Notice of Substantial Completion."

When the Contractor has completed all work listed in the "Notice of Substantial Completion," the Contractor shall prepare a written notice requesting a Final Inspection and a "Certificate of Acceptance of Work." The Department will hold an inspection of the Project as soon as practical after the Department determines that the Project may in fact have been completed. If the Department deems the Project complete, said inspection shall constitute the Final Inspection, and the Department will notify the Contractor in writing that the Final Inspection has been performed.

If the inspection discloses any unsatisfactory or incomplete Project work, the Department will notify the Contractor of such deficiencies. The Contractor shall immediately correct the deficiencies. Upon such correction, another inspection will be made that shall then constitute the final inspection, provided that the required work has been completed to the satisfaction of the Department. Upon such completion, the Department will notify the Contractor in writing that the final inspection has been performed with acceptable results.

On projects consisting of two (2) or more individual, geographically-separated sections of roadways, sites, or physically-separated buildings or portions of buildings, a partial final inspection of individual, fully-completed sections will be performed by the Department if the Contractor so requests.

If at any time during the prosecution of the Project the Contractor substantially completes a unit or portion of the

Project, such as, but not limited to, a structure, an interchange, a building, a portion of a site, a branch circuit in highway illumination that has been in satisfactory and continuous operation for a period of at least thirty (30) days, or a section of road or pavement, then, to the extent that said portion's stability and integrity are not dependent upon the completion of other Contract work, the completed unit or portion of the Project may be opened (1) to vehicular or pedestrian traffic under the provisions of Section 1.07.11 hereof; or (2) to railroad, aircraft, pedestrian or other traffic, or to occupancy, if the Department consents to it in writing.

A final inspection of the substantially-completed unit or portion of the Project will be arranged by the Department. Upon evidence of such completion, including issuance of a Certificate of Compliance for any building, and upon agreement by the Department, the Contractor will be relieved of the responsibility for the work placed upon it by Section 1.07.12 hereof. The Contractor shall be responsible for all damages of the completed unit or portion of the Project that may be caused by or that may result from the operations of the Contractor or its subcontractors; and the Contractor shall take such precautions and shall provide such protection as may be necessary in order to avoid possible damage to said unit or portion of the Project. The acceptance of the completed unit or portion shall in no way affect any other requirements governing the completion and acceptance of the Project as a whole.

**1.08.13 — Termination of the Contractor's Responsibility:** The Contractor's responsibility for non-administrative Project work will be considered terminated when:

1. A Final Inspection has been held;
2. Any required additional work and final cleaning-up have been completed to the Department's satisfaction.
3. All final operation and maintenance manuals have been submitted by the Contractor and accepted by the Department.
4. The Contractor and subcontractors have fully demobilized and all construction signs have been removed from the Site.
5. The Department has reviewed and accepted all Design Documents, As-Built Documents, surveys, test data and other deliverables required under the RFP or Contract.
6. All special tools purchased by the Contractor as provided in the RFP or Contract have been delivered to the Department, and all replacement spare parts have been purchased and delivered to the Department, free and clear of liens;
7. The Materials and Workmanship Quality Certificate, signed by the Contractor's Construction QC Managers and QC Administrator, has been submitted to the Department.
8. Certifications required by the Department have been submitted by the Contractor, such as, but not limited to, the CON-502.

When these requirements have been met to the satisfaction of the Department, the Commissioner will accept the Project by certifying in writing to the Contractor that the non-administrative Project work has been completed.

**1.08.14 — Acceptance of Project:** The Project will be accepted by the Commissioner when all Project work has been completed, as defined by the requirements of Section 1.08.13, and the following have been submitted to the satisfaction of the Department:

1. Supporting information necessary to substantiate pay quantities, such as cost-plus backup documentation.
2. Reports and forms required on all federal-aid projects.
3. Contractually-required warranties, guaranties, final operation and maintenance manuals, as well as documentation that training and start-up support required by the Contract, have been submitted to and accepted by the Department.
4. Any other documents or certifications required by the Contract or as directed by the Department have been submitted to and accepted by the Department..

**CHAPTER 1.09**  
**MEASUREMENT AND PAYMENT**

**1.09.01 — Vacant**

**1.09.02 — Vacant**

**1.09.03 — Vacant**

**1.09.04 — Extra and Cost-Plus Work**

**1.09.05 — Eliminated Items**

**1.09.06 — Partial Payments**

**1.09.07 — Final Payment**

**1.09.08 — Payment of Costs Owed to the State**

**1.09.01 — Vacant**

**1.09.02 — Vacant**

**1.09.03 — Vacant**

**1.09.04 — Extra and Cost-Plus Work:** Extra work shall be performed only under the conditions and subject to the requirements outlined in Section 1.04.05 hereof. Payment for such work shall be based either on a unit price or on a lump sum, to be agreed upon before the extra work is started, in accordance with Section 1.04.05; or, if no agreement as to price can be reached, the Engineer may pay for the work on a cost-plus basis.

For all work done on a cost-plus basis, the Contractor's compensation shall be determined in accordance with the following bases:

**(a) Labor Costs**

**i. Construction Related Labor:**

(1) For all labor, the Department will pay the Contractor the wage rate actually paid as shown by its certified payroll, which shall be at least the minimum rate established for the Project by the State Labor Department or the U.S. Department of Labor. For all foremen in direct charge of Project work, the Department will pay the Contractor the actual wage paid to the foremen as shown on the Contractor's certified payroll.

(2) The Department will reimburse the Contractor for the actual costs paid to, or on behalf of, workers by reason of allowances, health and welfare benefits, pension fund benefits and other such benefits, when such amounts are required by a collective bargaining agreement or under another employment contract generally applicable to the classes of labor employed on the Project. The Contractor shall certify all such costs.

(3) For property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on Project cost-plus work, the Department will reimburse the Contractor for its actual Project costs. The Contractor shall provide to the Department documentation, satisfactory to the Department in form and substance, of all such costs.

(4) The Department will also pay the Contractor an amount equal to twenty percent (20%) (15% for overhead, 5% for profit) of the total sums described in (a) (1) through (3) above.

No part of the salary or expenses of anyone in the Contractor's forces above the grade of foreman, who provides general supervision of Project work, will be included in the above payment calculations, except when the Contractor's organization is entirely occupied with cost-plus work, in which case the salary of a superintendent may be included in said labor item when the nature of the pertinent Project work is such that, in the opinion of the Department, a superintendent is required for that work. The allowable rate of pay for such superintendent shall be agreed upon before the Contractor begins the pertinent work. If no agreement on the rate can be reached, the Department will make payment based on such rate as it deems reasonable.

The Department reserves the right to determine the number and type of personnel to be employed for the cost-plus Project work.

ii. **Engineering Related Costs:**

The Department will pay (a) the subject workers' actual wages (*i.e.*, the base wage paid to the employee exclusive of any fringe benefits), plus (b) a labor surcharge in the amount of one hundred and sixty-five percent (165%), which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, insurance, fringe benefits and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as all, direct and indirect costs, overhead and profit related to the engineering work.

The Department reserves the right to determine the number and type of engineering personnel to be employed for the cost-plus Project work.

**(b) Specialized Work:**

When the Department directs the Contractor to perform specialized work requiring skills, tools and equipment substantially unlike those ordinarily used by the Contractor or its authorized Project subcontractors, the Department will pay the Contractor for the use of a specialist to perform the specialized work. For such specialized services, including materials incorporated into the Project, the Department will pay the Contractor its actual costs, plus additional compensation in accordance with subparagraph (e) below. Prior to performing such specialized work, the Contractor shall obtain and submit to the Department a minimum of three price quotes for the work, if requested by the Department.

**(c) Construction Materials:**

For all materials necessary for cost-plus Project construction work, the Department will pay the Contractor its actual cost for such materials as delivered to the Site, including delivery charges as shown by original receipted bills, plus fifteen percent (15%) of the sum of said cost and charges.

In lieu of receipted bills for materials used that were not specifically purchased for the Project, but were taken from the Contractor's stock, the Contractor shall provide to the Department an affidavit certifying that such materials were not purchased for the Project, that the materials were taken from the Contractor's stock, that the quantity claimed to have been used on the Project was actually so used, and that the price claimed for the materials is currently their fair market value. The Department will pay for costs of transporting the materials to the Site, in accordance with subparagraphs (a) and (d) hereof.

The Department will not reimburse the Contractor for any penalty or charge incurred due to the Contractor's late or delayed payment for the pertinent materials.

**(d) Construction Equipment:**

All equipment used for cost-plus construction Project work must, in the judgment of the Department, be in good working condition and suitable for the purpose intended; and the Department reserves the right to determine the size and number of units of equipment to be used for such work. The manufacturer's ratings shall be the basis for all Rental Rate Blue Book classifications used for payment purposes. ("Rental Rate Blue Book" as used in these specifications refers to the current edition of the Rental Rate Blue Book, taking into account all current Rate Adjustment Tables, and amendments thereof, which is published by K III Directory Corporation of San Jose, California, including all current Rate Adjustment Tables and amendments thereof.) Trucks will be classified by cubic-yard capacity.

No percentage mark-up will be added for payment purposes to amounts charged by the Contractor based on equipment rental rates.

The Department will not pay rental rates for small tools needed for the cost-plus Project work.

For payment purposes, estimated operating costs per hour from the Rental Rate Blue Book will apply only to the actual time during which the equipment is actively being used to perform cost-plus Project work.

For equipment that is also being used for non-cost-plus Project work, the Department will pay the applicable hourly rate only for the actual time that the equipment is assigned to cost-plus Project work. The applicable period of assignment for each piece of equipment shall start when the equipment commences to be used for cost-plus Project work ordered by the Department and shall end at the time designated by the Department.

For equipment that has to be brought to the Site exclusively for cost-plus work, the Department will reimburse the Contractor for loading and unloading costs and costs of transporting such equipment to and from the Site; provided, however, that payment for return transportation from the Site shall not exceed the cost of moving the equipment to the Site. If such a piece of equipment is self-propelled and is driven to the Site under its own power, then the Department will pay only operating costs and labor costs for its transport to and from the Site. The Department will not, however,

pay for any loading, unloading and transportation costs if the equipment is used for any Project work on the Site other than cost-plus work.

- (1) Owned Equipment: The Department will pay the Contractor the applicable rental rate set forth in the Rental Rate Blue Book for any equipment (1) that the Contractor uses, with the Department's authorization, to perform cost-plus Project work, and (2) that is owned by the Contractor or a subsidiary, affiliate, or parent company of the Contractor (no matter how far up or down the chain of ownership from the Contractor).

The maximum hourly rate to be used in paying for Contractor-owned equipment assigned to cost-plus work shall be the applicable monthly rate in the Rental Rate Blue Book, divided by one hundred and seventy-six (176) working hours per month.

Should the proper completion of the cost-plus Project work require equipment of a type not covered by the Rental Rate Blue Book, the Department will determine, and the Department will make payment to the Contractor at, a reasonable rental rate based on rates for the equipment in the area of the Site. If practicable, such rates shall be determined by the Department before the related work is begun. If the Contractor proposes that the Department use a particular rate in such an instance, the Contractor must disclose to the Department the specific sources of, or support for, said rate.

If a piece of equipment owned by the Contractor is assigned to cost-plus Project work, but remains idle for some portion of the period of the cost-plus work, the Department will pay for that idle time at fifty percent (50%) of the applicable rental rate (exclusive of operating costs) in the Rental Rate Blue Book.

For payment purposes, the period of equipment usage shall be deemed to start when the Contractor begins to use the equipment for cost-plus Project work and shall be deemed to end when the equipment is released by the Department from use for such work. Any hours during which the equipment is used for work other than cost-plus Project work will be deducted from the pertinent payment period.

For any piece of Contractor-owned equipment assigned to cost-plus Project work, the Department will reimburse the Contractor for an aggregate minimum of eight (8) hours (of use time, idle time, or a combination thereof) in each twenty-four-(24-)hour day (measured from one midnight to the following midnight) during the assignment period. No such reimbursement will be made, however, for Saturdays, Sundays and legal holidays during which the Contractor does no Project work, or for any other day on which the Department orders the Contractor to do no Project work. If the equipment is used to perform cost-plus Project work for more than eight (8) hours in a day (as define above), the Department will pay the Contractor at the applicable hourly rate computed on a monthly basis for the actual time of use; however, the Department will not pay the Contractor for more than eight (8) hours of idle time for a piece of equipment during a given day.

The Department shall have the right to limit its aggregate Project payments for idle time for a given piece of equipment to the replacement value of that equipment.

- (2) Rented Equipment: If the Department determines that in order to perform the cost-plus Project work the Contractor must rent certain machinery, trucks or other equipment not owned by the Contractor or a subsidiary, affiliate, or parent company of the Contractor (no matter how far up or down the chain of ownership from the Contractor), the Contractor shall inform the Department, in advance of such rental, of (1) the specific nature of the rental(s), (2) the reasons for its need for such rental(s), (3) the anticipated or proposed rental rate(s), and (4) the estimated duration for the use of the equipment. Rates for such rented equipment must be provided based on the following:

-- A daily rate per hour when the equipment is to be specifically assigned to Project work by the Department for a period of seven (7) consecutive calendar days or less.

-- A weekly rate per hour when such assigned time exceeds seven (7) consecutive calendar days, but does not exceed twenty-one (21) consecutive calendar days.

--A monthly rate per hour when such assigned time exceeds twenty-one (21) consecutive calendar days.

The applicable daily, weekly, or monthly rate will be determined at the expiration of twenty-one (21) calendar days or upon release of the equipment by the Department, whichever occurs first. Interruptions of the rental period, when equipment is used on other than assigned cost-plus work, will not entitle the Contractor to payment at a rental rate that would be applicable to the shorter periods arguably occasioned by such interruptions.

Prior to renting such equipment, the Contractor shall obtain and submit to the Department a minimum of three (3) quotes, if requested by the Department.

The Department will pay the Contractor for such rental at the rate actually paid by the Contractor, provided that the

given use and rental rate are acceptable to the Department. In order to obtain such payment, the Contractor must provide the Department with a copy of the original receipted bill for the rental expenses incurred.

**(e) Administrative Expense:**

When extra work on a cost-plus basis is performed by an authorized subcontractor, the Department will pay the subcontractor in the same manner as described in (a) through (d) above and (g) below. The Contractor shall receive an additional seven-and-a-half percent (7.5%) of the amount earned by the subcontractor on cost-plus work; such payment will be in addition to any amounts earned by the Contractor for the work of its own forces and shall serve as the only reimbursement for the Contractor's administrative expense in connection with such work. Administrative expense in excess of the seven-and-a-half percent (7.5%) to the Contractor shall not be paid; however, the Contractor may divide the seven-and-a-half percent (7.5%) as deemed appropriate if there are lower-tier subcontractors involved in the work. Approval of such additional payments will be given only after the Contractor provides to the Department receipted invoices for all relevant costs.

**(f) Miscellaneous:**

The compensation provided for in (a), (b), (c), (d) and (e) above shall be deemed to be payment in full for the extra work and shall be deemed as full compensation for same, including costs of superintendence, use of small tools, equipment for which no rental is allowed, safety equipment, consumables, field office overhead, home office overhead, bonding, other insurance, and profit. The Contractor's representative and the Department Representative shall compare their respective records of the extra work done on a cost-plus basis at the end of each day. Copies of those records shall be signed by both the Department Representative and the Contractor's Representative. The Department will then forward a copy of same to the Contractor and to any affected subcontractor in accordance with Department procedures. Upon payment of such costs by the Contractor, the Contractor shall immediately furnish the Department with original receipted bills covering the costs, including transportation charges, for all materials used for such work.

**1.09.05 — Eliminated Items:** Should the Department deem any Contract items, or portion of Project work contained in a lump sum item, to be unnecessary for completion of the Project, the Department may eliminate such items or portion of work from the Contract. Such action shall in no way invalidate the Contract, and no allowance for any items or portion of work contained in a lump sum item so eliminated will be made by the Department in making final payment to the Contractor, except for (a) such actual work as may have been done on the items, or portion of work contained in a lump sum item, prior to the Department's notice to the Contractor that the items or work had been eliminated; and (b) such related material as may have been purchased for the Project prior to said notice. This provision shall apply unless the Department determines that an elimination of a given item, or portion of work contained in a lump sum item, constitutes a "significant change" in the character of the Contract work, as defined under Section 1.04.03 hereof. In such a case, the terms of Section 1.04.03 shall be applied to the payment issues related to the eliminated item or work.

**1.09.06 -- Method of Payment**

**A. Monthly Estimates.**

Progress payments to the Contractor for design or construction of the Project will be based on a cost-loaded critical path method ("CPM") schedule, and schedule of values equaling the major lump sum bid price (together known as the "PPS"), as well as any other items outlined in the Contract. Retainage will not be held.

Prior to making any Contract payments to the Contractor, the Department must approve the Initial Baseline PPS, the associated Schedule of Values, and the Monthly Payment Request form. The Contractor will be paid based on accepted initial updates to the initial Baseline PPS, the accepted associated schedule of values, and the accepted Monthly Payment Form. Prior to the expiration of the timeframe that is covered by the initial PPS, the Contractor shall and gain approval for the Baseline PPS and schedule of values covering the entire Project. Thereafter, the Contractor will be paid based on accepted monthly updates to the PPS Baseline. Failure to obtain approval for the required submissions prior to an associated request for payment will delay payments to the Contractor.

Monthly Payment requests shall be derived from the updated CPM Schedule (exported activity costs). The Contractor shall also include a quantification of all units installed, anticipated days for completion, and a current percentage of completion (as validated by the Department) for all activities that are part of the Lump Sum breakdown as submitted in the CPM Schedule.

The Contractor shall not revise the estimated costs approved as part of the baseline schedule in the scheduling software for progress schedule submissions without the Department's prior approval of its doing so. Whether approved or not, the costs in the PPS shall not be updated in a way that diminishes the estimated cost of the remaining work.

In determining the monthly payment estimate and the percentage of Project completion, the Contractor shall include appropriate percentages acceptable to the Department for testing of materials and finishes. A portion of the work shall not be determined as one hundred percent (100%) complete until the Department has determined that all required apparent testing has been approved and punchlist work is complete.

The Contractor shall not be entitled to a payment for any portion of the work in excess of the demonstrated percentage completion of such activity. Furthermore, Department may, at its discretion, withhold payment, in the event that the Contractor fails to install the work correctly or if Department does not agree with the estimated amount of work completed.

The Department will evaluate the payment requested and attempt to resolve any discrepancies between the Department's records and the Contractor's payment request regarding the amount of work completed and amount of partial payments, but the Department will have the final authority in determining the estimated work completed and acceptable to date.

Exceptions may be made as follows:

(a) No estimates for payment will be made when, in the judgment of the Department, the Project is not proceeding in accordance with the Contract, or the total value of the Project work done since the last estimate has a Contract value less than two thousand, five hundred dollars (\$2,500) or two percent (2%) of the total Proposal Price, whichever is less.

(b) In the event that after the Proposer with the apparent Best Value score has been awarded the Contract this Contract is terminated or a portion of this Contract is deleted for any reason or in any way allowable by law under this Contract, the schedule of values will not be used for estimating payment due to the Contractor for work completed prior to such termination of the Contract or deletion of work thereunder. In the case of Contract termination, payment shall be evaluated in accordance with Section 1.05.14 hereof

(c) The Department may also make payment at an amount that represents the value of the Project work performed to date, if said units are essentially, though not totally, complete.

(d) Estimates may also include materials not yet incorporated into the Project, but which have been approved by the Department for payment, if all of the requirements of the Payment for Material Stored section below have been met, and any required certifications have been provided to the Department.

#### **B. Payment for Stored Materials:**

Non-perishable materials that meet Contract requirements, that have been produced or purchased specifically for incorporation into the Project, and that have been delivered to the Site or a location approved by the Department, but have not yet been incorporated into the Project, may be included in current estimates at such fraction of the applicable Contract unit price or lump sum price as the Department deems to represent a fair value for the material, if such materials have been paid for by the Contractor as shown by receipted bills or, in lieu of such receipted bill(s), by a duly-executed Certification of Title executed by the Contractor and the Vendor in the form approved by the Department. When the Contractor has made partial payment for stored materials, such materials shall become the property of the State; but such payment shall in no way release the Contractor from its responsibility for the condition, protection and, in case of loss, replacement of such materials, or from any liability resulting in any manner from the presence of such materials wherever they may be stored or kept. All materials shall be stored in accordance with Section 1.06.03 hereof and in accordance with the Manufacturer's recommendations. The materials must be tested as required by the Department, and the tests must produce results acceptable to the Department, before the Department shall be required to pay for such materials.

Offsite storage may be approved by the Department provided that the materials proposed for payment are segregated from other materials, clearly labeled as being owned by the Department for use on the identified Project, otherwise handled in compliance with Section 1.06.03 hereof, and stored in accordance with the manufacturer's recommendations. All such materials must be readily available for inventory and inspection

by the Department. Storage outside of the State of Connecticut may be considered only if and when a representative of the Department has verified that the above requirements have been satisfied.

For items requiring extended fabrication, manufacturing or assembly time, the Contractor may propose to the Department a schedule of values for the related material costs. If the Department approves such a schedule of values, it shall become the Basis of Payment for the stored materials, so long as all other pertinent Contract requirements have been satisfied.

Generic materials having a use on many projects will be considered for payment prior to their incorporation into the Project only if stored in unopened packaging or in large lots. Stock and raw materials will not be considered for such advance payment without the Department's prior written consent thereto.

In no case shall material payments exceed the Contract unit price or lump sum price or a portion thereof estimated by the Department, less the actual value of delivery and installation of the materials; if they do exceed such a price, the Department reserves the right to reduce any related payment accordingly. Such reductions in payment shall in no way affect the Department's ownership interest in the stored materials.

**1.09.07 — Final Payment:** When the Commissioner has accepted the Project, the Contractor shall prepare a final payment request in conjunction with the final PPS submission, listing the progress payment totals to date and any apparent remaining balances. The Department will review the payment request and may meet with the Contractor to attempt to resolve any discrepancies. If there are portions of the final estimate that cannot be resolved during such an initial meeting, the Contractor shall have twenty-one (21) days in which to submit justification for the disputed amounts. Upon receipt of such justification, the Department will review the information and make a final determination as to the appropriate payment to be made.

All payments made prior to the final estimate shall be considered estimated payments and subject to correction in the calculation of the final payment. If the Contractor wishes to dispute the final determination of payment made by the Department, it may appeal that determination in accordance with the terms of Section 1.05.01 hereof.

**1.09.08 — Vacant**

**1.09.09 — Payment of Costs Owed to the State:** The State shall have the right to set off against amounts otherwise due to the Contractor under this Contract or under any other contract or arrangement that the Contractor has with the State (a) any costs that the State has incurred due to the Contractor's noncompliance with this Contract and (b) any other amounts that are due and payable from the Contractor to the State. Any sum taken in setoff from the Contractor shall be deemed to have been paid to the Contractor for purposes of payment obligations under Section 1.03.04 hereof.

**CHAPTER 1.10**  
**ENVIRONMENTAL COMPLIANCE**

**1.10.01 — General**

**1.10.02 — Compliance with Laws and Regulations**

**1.10.03 — Water Pollution Control**

**1.10.04 — Air Quality Control**

**1.10.05 — Noise Pollution**

**1.10.06 — Protection of Archaeological and Paleontological Remains and Materials**

**1.10.07 — Controlled and Hazardous Materials**

**1.10.08 -- Vehicle Emissions**

**1.10.01 — General:** This Chapter identifies those construction activities and other activities under the Department's control or jurisdiction that may have a negative effect on the environment, including the State's native waters and natural resources; and this Chapter requires the taking of measures to prevent or minimize any damage to the environment that might result from such activities, either during or following the completion of the Project.

The Contractor shall comply with all Project permits and permit applications as though the Contractor were the permittee. If at the time that such permit is issued its contents differ from those outlined in the permit application, the permit shall govern. Should the permit be issued after the solicitation of bid proposals, and should the permit requirements significantly change the character of the work as described in the Contractor's Proposal, Contract adjustments will be made in accordance with the applicable Sections in Chapter 1.04 hereof.

This Chapter reinforces environmental protection requirements that the Contractor is obliged to meet under the Contract or under Federal or State laws or regulations. If the Contractor fails to comply with environmental provisions of the Contract or the law, the Contractor shall be penalized as prescribed in this Chapter and elsewhere in the Contract and the law. Furthermore, the Contractor shall not be entitled to compensation for delays of the Project that result from the Contractor's failure to comply with environmental provisions of the Contract.

In addition to the requirements outlined in this Chapter, additional requirements of a similar kind are detailed in Part 2 of the Contract.

**1.10.02 — Compliance with Laws and Regulations:** The Contractor shall conduct its operations in compliance with federal and state permit requirements concerning water, air and noise pollution, and the disposal of controlled or hazardous materials. Said permit requirements include, but are not limited to, those established by Federal regulations administered by the United States Coast Guard, Army Corps of Engineers, or the Environmental Protection Agency ("EPA").

Appropriate permits shall be required for all activities associated with or incidental to the Contractor's operations, including, but not limited to, those regarding the Site or adjacent areas, waste and disposal areas, borrow and gravel banks, storage areas, haul roads, access roads, detours, field offices, or any other temporary staging areas. The Contractor shall be responsible for, and hold the State harmless from, any penalties or fines assessed by any authority due to the Contractor's failure to comply with any term of an applicable permit.

The Department has gained certain permits related to the BTC. The responsibility for obtaining environmental permits for Contract work is explained in Part 2 of the Contract.

Any request by the Contractor for authorization of activities or methods not specifically called for or allowed by the applicable permits issued for the Project must be submitted by the Contractor in writing to the Department. Such a request must include a detailed description of the proposed activities or methods, and must include justifications for same, along with supporting documentation, showing that the proposed activity or method will not create a risk of damage to the environment. If such request is granted by the Department, the Department will process an application to the appropriate regulatory agency or agencies for any permit amendment, modification, revision or new permit required for the Contractor to carry out the changed activities or use the methods in question. The Department does not, however, guarantee that it will be able to obtain the desired permit amendment, modification or revision; and the Department will not be liable for the effects of any inability to do so.

The Contractor will not be entitled to any extension of Contract time as a result of the Department's granting of such a request from the Contractor. If the amendment, modification, or revision of the permit is not necessary except to make possible the changes requested by the Contractor, then no claim may be made by the Contractor based on the amount of time taken by the Department to review the Contractor's request, or to apply for or secure the permit amendment, modification or revision. No such proposed additional activity shall commence, nor shall such a changed method be used, until and unless the Department approves in writing the Contractor's request.

In case of a failure by the Contractor to perform pollution control work as required by the Department, the Department may, after having given the Contractor twenty-four (24) hours advance written notice of its intention to do so, arrange for said work to be performed by other forces, and will deduct the cost from any monies due or that may become due to the Contractor under the Contract or under any other State contract.

### **1.10.03 — Water Pollution Control:**

1. In relation to its Project work, the Contractor shall, throughout the duration of the Contract, control and abate siltation, sedimentation and pollution of all waters, including, but not limited to, underground water systems; inland wetlands; and tidal, coastal, or navigable waters. Construction methods proposed by the Contractor must comply with permit application and permit requirements. The Contractor shall assume responsibility for all obligations and costs incurred as a result of the Contractor's failure to comply with terms or conditions of such applications or permits.

The Contractor shall obtain any environmental permits and pay any fees required for the performance of related Project work that are not required by the original Contract and (i) which have been made necessary by a failure of the Contractor to comply with any Contract water pollution control requirement, (ii) which is proposed by the Contractor and accepted by the Department, (iii) which is to be performed outside the Project limits, and (iv) which will involve or necessitate water-handling activities, including, but not limited to, the removal of material from, deposit of materials into, obstruction of, construction within, alteration or pollution of, any inland wetland, tidal wetland, coastal or navigable water, stream, pond, lake, water supply, other body of water or other regulated area.

2. Provisions of the Best Management Practices may be superseded by specific permits from the DEEP. The Contractor shall not make any design change in the Contract work that requires a variance from the requirements of the following practices until and unless the Contractor has first submitted a detailed written proposal for such change to the Department for review by the Department and for transmittal to and review by the DEEP, and has then received written Department approval of the proposed variance.

### **BEST MANAGEMENT PRACTICES**

1. No Project construction shall proceed until (i) the Contractor has submitted in writing to the Department its erosion and sedimentation control plans for all Project construction; (ii) the Department has given in writing its approval of said plans; and (iii) the Contractor has installed all erosion and sedimentation controls called for by such plans approved by the Department. Such plans shall be consistent with the Connecticut Council on Soil & Water Conservation's "Connecticut Guidelines for Soil Erosion and Sediment Control" (which is available from the DEEP) and with the version of the Department's "On Site Mitigation for Construction Activities" which is in effect at the time that Proposals are solicited.
2. Fueling of equipment or machinery within twenty-five (25) feet (8 m) of any wetland or watercourse shall be allowed only with the advance written approval of the Department.
3. No Project construction shall proceed unless and until a written proposal of methods to prevent construction debris, paint, spent blast materials, or other materials from entering any wetland or watercourse has been submitted by the Contractor and approved by the Department in writing; and until such methods have been implemented as the Department directs. Such materials shall be collected and disposed of in accordance with all applicable federal and state laws and regulations. The Department may order the Contractor to cease such activity if, in the opinion of the Department, weather conditions threaten to cause the deposit of such materials into a wetland or watercourse.
4. No materials resulting from Project construction activities shall be placed in or allowed to contribute to the degradation of a wetland or watercourse. Disposal of any material shall be in accordance with federal and state laws and regulations.
5. Fording of streams with equipment shall be prohibited, except as approved in advance, in writing, by the Department. Such equipment travel shall be minimized as much as possible, even if approved. When frequent

equipment travel on stream banks and beds is necessary, the Contractor shall place washed stone as and where necessary in order to minimize erosion, scour, and turbidity; but the Contractor must not do so in a way that will create a significant grade change in the wetland or watercourse.

6. All off-Site disposal locations for material and debris resulting from Project construction shall be submitted in writing to the Department in advance of their use, and the Department shall determine if they are acceptable. The Contractor shall ensure that such locations are outside of wetlands and watercourses, floodplains, and stream channel encroachment lines, unless otherwise approved by local, state, or federal agencies with jurisdiction over the matter. Copies of such approvals shall be kept at the Site by the Department in the environmental inspection folder. Furthermore, the Contractor shall ensure that material from the Project is not placed within an area that has a better water quality classification than does the area from which it was taken, as indicated by the latest DEEP Water Quality Classifications Maps. Any proposed location for disposal of material within a State right-of-way must also be submitted in advance by the Contractor in writing to the Department for subsequent review and possible approval by the Office of Environmental Planning and the Office of Engineering.
7. A construction-sequencing plan and a water-handling plan, including a contingency plan for flood events, must be submitted by the Contractor in writing to the Department, and approved by the Department, prior to the commencement of any Project construction in a waterway. Water shall be kept deep enough in any affected channel to allow for the passage of fish and the continuous flow of the watercourse, unless the Department directs otherwise. Any revised version of the water-handling plan must be capable of accommodating a two-year storm. Any water-handling system that may be in place longer than six (6) months must be designed in accordance with the Department's Drainage Manual.
8. When dewatering is necessary, pumps used for same shall not be allowed to discharge directly into a wetland or watercourse. Prior to any dewatering, the Contractor must submit to the Department a written proposal for specific methods and devices to be used for same, and must obtain the Department's written approval of such methods and devices, including, but not limited to, the pumping of water into a temporary sedimentation basin, providing surge protection at the inlet or outlet of pumps, floating the intake of a pump, or any other method for minimizing and retaining the suspended solids. If the Department determines that a pumping operation is causing turbidity problems, the Contractor shall halt said operation until a means of controlling the turbidity is submitted by the Contractor in writing to the Department, approved in writing by the Department, and implemented by the Contractor.
9. Work within or adjacent to watercourses shall be conducted during periods of low flow, whenever possible. The Department shall remain aware of flow conditions during the conduct of such work, and shall order such work stopped if flow conditions threaten to cause excessive erosion, siltation or turbidity. The Contractor shall make every effort to secure the work site before predicted major storms. A major storm shall be defined as a storm predicted by NOAA Weather Service with warnings of flooding, severe thunderstorms, or similarly severe weather conditions or effects. Unless allowed by a DEEP permit, no materials shall be stored and no staging areas shall be placed below the one-hundred-(100-)year elevation. Materials that are buoyant, hazardous, flammable, explosive, soluble, expansive, or radioactive, and any other materials that could be injurious to human, animal or plant life in the event of a flood, shall not be stored below the five-hundred-(500-)year flood level.
10. All temporary fill shall be stabilized so as to prevent erosion, and such fill shall be contained so as to prevent sediment or other particulate matter from entering a wetland or watercourse. All areas affected by temporary fills must be restored to their original contours or as directed by the Department, and vegetated. Temporary fill shall be placed and excavation shall occur only as and where necessary for Project construction, as determined by the Department.
11. The Contractor shall perform seeding within seven (7) days of reaching an appropriate grading increment, as determined by the Department. If the Department directs the Contractor, or if the Contractor intends, that a grading operation will be suspended for a period of thirty (30) or more consecutive days, the Contractor shall, within the first seven (7) days of that period, accomplish required seeding, or take such other measures to stabilize the soil as may be required by the Department.
12. Dumping of oil, chemicals or other deleterious materials on the ground or into a watercourse is forbidden. The Contractor shall provide a means of catching, retaining, and properly disposing of drained oil, removed oil filters, and other deleterious material. The Contractor shall immediately report all spills of such materials to the Department and the DEEP

13. All application of herbicides or pesticides within twenty-five (25) feet (8 m) of any wetland or watercourse is prohibited. All permitted uses of such materials must be carried out by a Connecticut-licensed applicator. The Contractor shall submit in writing to the Department the proposed applicator's name and license number, and must receive the Department's approval of the proposed applicator, before such application may be performed.
14. During spawning seasons and in spawning areas, as defined in the Contract, discharges and construction activities shall be restricted so as not to disturb or inhibit aquatic species indigenous to potentially affected waters.

3. If the Contractor wants to make a change in construction operations or scheduling that would affect the use of or necessity for any pollution controls, the Contractor must submit before beginning to implement those changes a written proposal detailing them to the Department, and must receive the Department's approval of those changes before beginning to make them. Such submission must include a plan showing what erosion and sedimentation controls above and beyond those called for in the Contract, if any, would be necessitated by the proposed change.

4. The Contractor shall inspect erosion and sedimentation controls immediately after each rainfall of at least .1 inch (3 mm), and at least daily during prolonged rainfall. The Contractor shall maintain all erosion and sedimentation control devices in a functional condition, in accordance with the "Connecticut Guidelines for Soil Erosion and Sediment Control," as revised, and the Department's "On Site Mitigation for Construction Activities," as revised. In the event that the Contractor fails to maintain such devices in accordance with such documents, and the Contractor does not correct said such failures within twenty-four (24) hours after receipt of written notice of such failures from the Department, the Department may proceed with its own or other forces to remedy such failures. The cost to the Department of curing any such specified failure will be deducted from monies owed to the Contractor under the Contract or under any other State contract.

**1.10.04 — Air Quality Control:** The Contractor shall exercise every reasonable precaution throughout the duration of the Project to safeguard the air resources of the State by controlling and abating air pollution in accordance with DEEP regulations. These measures shall include the control and abatement of dust, mist, smoke, vapor, gas, aerosol, other particulate matter, odorous substances and any combination thereof arising from Project operations, hauling, storage, or manufacture of materials. The Contractor shall be responsible for obtaining any permits necessary for the operation of its Project equipment, including but not limited to crushers, compressors and generators.

**1.10.05 — Noise Pollution:** The Contractor shall take measures to control the noise caused by its construction operations, including, but not limited to noise generated by equipment used for drilling, pile-driving, blasting, excavation, or hauling.

All methods and devices employed to minimize noise shall be subject to the continuing approval of the Department. The maximum allowable level of noise at the residence or occupied building nearest to the Site shall be ninety (90) decibels on the "A" weighted scale ("dBA"). The Contractor shall halt any Project operation that violates this standard until the Contractor develops and implements a methodology that enables it to conduct its Project operations within said dBA limit.

**1.10.06 — Protection of Archaeological and Paleontological Remains and Materials:** The Contractor shall be alert to the possibility that, during the prosecution of the Project, significant archaeological or paleontological remains or other such materials may be uncovered. When archaeological or paleontological materials are uncovered, the Contractor shall immediately halt operations in the location of same and shall notify the Department of said discovery. The Contractor shall make every effort to preserve archaeological or paleontological materials intact in their original positions, in order to preserve the archaeological or paleontological nature and importance of such materials in relation to one another and to the enclosing soil.

The Department shall have the authority to suspend Project work in the area of such discovery for the purpose of preserving, documenting and recovering the archaeological or paleontological materials. The Contractor shall carry out all instructions of the Department for the protection of such materials, including steps to protect the Site from vandalism and unauthorized investigations, from accidental damage and from dangers such as heavy rainfall or runoff. The Contractor shall reschedule its work so as to minimize any loss of the time needed to complete the Project while the State evaluates, records and salvages the archaeological or paleontological materials.

Extra work ordered by the Department in this connection will be paid for in accordance with Sections 1.04.05 and 1.09.04 hereof. Delays caused by actions related to archaeological or paleontological preservation and protection, which the Contractor demonstrates have delayed completion of the Project, will be treated under the provisions for extension of time, Section 1.08.08 hereof.

**1.10.07—Controlled and Hazardous Materials:** The Department will acquire any "Hazardous Waste Generator

Permit(s)" required under the Resource Conservation and Recovery Act, for the management and disposal of hazardous materials on the Site, provided that

1. such material is within the construction limits defined in the Contract, and
2. such material is not comprised of waste materials generated by the Contractor.

If the Department has designated in the Contract an area of known or suspected contamination within the Project limits, the Contractor shall dispose of all contaminated material in accordance with the relevant Special Provisions.

In the event that the Contractor encounters or exposes any material, not previously known or suspected to be contaminated, but which exhibits properties that may indicate the presence of controlled or hazardous material, the Contractor shall cease all operations in the material's vicinity and shall immediately notify the Department of the material's discovery. The presence of barrels, discolored earth, metal, wood, visible fumes or smoke, abnormal odors or excessively hot earth may indicate the presence of controlled or hazardous material, and shall be treated with extreme caution.

If controlled or hazardous materials, other than those required for Contract operations, are discovered at the Site, the Department may engage a specialty contractor to handle and dispose of the materials.

When the Contractor performs support work incidental to the removal, treatment or disposal of controlled or hazardous material, the Department will pay for same at the applicable Contract unit prices. When the Contract does not include appropriate pay items for same, payment will be made in accordance with Section 1.04.05 hereof.

The Contractor shall observe all security precautions established pursuant to 29 CFR 1910.120 and 1926.65, including all revisions and amendments thereof, and shall not work in any area known to contain or suspected of containing controlled or hazardous material without prior written approval from the Department to do so.

The Contractor shall assume sole responsibility for the proper storage, handling, management, and disposal of all regulated materials and wastes associated with its operations, including, but not limited to, lubricants, antifreeze, engine fluids, paints, and solvents. All costs associated with any failure by the Contractor to properly manage such materials in accordance with federal and state regulations, and all remedial and punitive costs incurred by the Department as a result of such failure, shall be borne by the Contractor.

This Section does not apply to coatings removed by the Contractor.

**1.10.08–Vehicle Emissions:** All motor vehicles and construction equipment (both on-highway and non-road) shall comply with all pertinent state and federal regulations relating to exhaust emission controls and safety.

The Contractor shall establish staging zones for vehicles that are waiting to be load or unloaded at the Contract area. Such zones shall be located where the emissions from the vehicles will have minimum impact on abutters and the general public.

Idling of delivery trucks, dump trucks, and other equipment shall not be continued for periods in excess of three (3) minutes during periods of Project non-activity, except as allowed by the Regulations of Connecticut State Agencies, Section 22a-174-18(b)(3)(c):

No mobile source engine shall be allowed "to operate for more than three (3) consecutive minutes when the mobile source is not in motion, except in the following instances.

- (i) When a mobile source is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control.
- (ii) When it is necessary to operate defrosting, heating or cooling equipment to ensure the safety or health of the driver or passengers.
- (iii) When it is necessary to operate auxiliary equipment that is located in or on the mobile source to accomplish the intended use of the mobile source.
- (iv) To bring the mobile source to the manufacturer's recommended operating temperature.
- (v) When the outdoor temperature is below twenty degrees Fahrenheit (20 degrees F) [negative seven degrees Celsius (-7 degrees C)].
- (vi) When the mobile source is undergoing maintenance that requires such mobile source be operated for more than three (3) consecutive minutes.
- (vii) When a mobile source is in queue to be inspected by U.S. military personnel prior to gaining access to a

U.S. military installation.”

All pertinent work shall be conducted so as to ensure that no harmful effects are caused to adjacent sensitive receptors. Sensitive receptors include but are not limited to hospitals, schools, daycare facilities, elderly housing and convalescent facilities. Engine exhaust shall be located away from fresh air intakes, air conditioners, and windows.

A Vehicle Emissions Mitigation plan will be required for areas where extensive work will be performed within less than fifty (50) feet (15 meters)) of sensitive receptors. The Contractor will not proceed with any work in the area until a sequence of construction and a Vehicle Emissions Mitigation plan has been submitted in writing to the Department for review and the Contractor has addressed all comments from the Department in a manner acceptable to the Department. The mitigation plan must address the control of vehicle emissions from all vehicles and construction equipment.

Any costs associated with activities covered in this “Vehicle Emissions” Section shall be included in the general cost of the Contract. In addition, there shall be no time granted to the Contractor for compliance with this Section. The Contractor’s compliance with this Section and any associated regulations shall not be grounds for any claim for payment from the State. (See Chapter 1.11 – “Claims” herein.)

## CHAPTER 1.11

### CLAIMS

#### 1.10.01 — General

#### 1.10.02 — Notice of Claim

#### 1.10.03 — Recordkeeping

#### 1.10.04 — Claim Compensation

#### 1.10.05 — Required Claim Documentation

#### 1.10.06 — Auditing of Claims

**1.11.01 – General:** When filing a formal claim under CGS Section 4-61 as revised (referred to as “Section 4-61” below), either as a lawsuit in the Superior Court or as a demand for arbitration, the Contractor must follow the procedures and comply with the requirements set forth in this Chapter of the Specifications, in addition to the requirements of Section 4-61. This Chapter does not, unless so specified, govern informal claims for additional compensation that the Contractor may bring before the Department. The Contractor should understand, however, that the Department may need, before the Department can resolve such a claim, the same kinds of documentation and other substantiation that it requires under this Chapter. It is the intent of the Department to compensate the Contractor for actual increased costs caused by or arising from acts or omissions on the part of the Department that violate legal or Contractual duties owed to the Contractor by the Department.

**1.11.02 – Notice of Claim:** Whenever the Contractor intends to file a formal claim against the Department under Section 4-61, seeking compensation for additional costs, the Contractor shall notify the Commissioner in writing (in strict compliance with Section 4-61) of the details of said claim. Such written notice shall contain all pertinent information described in Section 1.11.05 below.

Once the Contractor has served on the Commissioner formal notice of a claim under Section 4-61(b), the claimant may not change the claim in any way, in either concept or monetary amount without serving on the Commissioner a new notice of claim reflecting all such changes, within the Section 4-61(b) limitations period for same. If the Contractor has served on the Commissioner formal notice of a claim under Section 4-61(b) and has subsequently filed a formal demand for arbitration based on that notice, the claimant may not change the claim in any way, in either concept or monetary amount, without (1) serving a new notice of claim on the Commissioner within the Section 4-61(b) limitations period for same, (2) filing a new demand for arbitration within the Section 4-61(b) limitations period for same to reflect any such change(s), and (3) waiting at least six (6) months after said filing of a new demand before seeking to commence any arbitration hearing on the merits of a claim stated in the notice of claim and demand for arbitration.

**1.11.03 – Recordkeeping:** The Contractor shall keep daily records of all costs it incurs in connection with its Project-related activities. These daily records shall identify each aspect of the Project related to any claim for additional compensation that the Contractor has filed, intends to file, or has reason to believe that it may file against the Department; the specific Project locations where Project work has been so affected; the number of people working on the affected aspects of the Project at the pertinent time(s); and the types and number of pieces of equipment on the Site, and whether they were active or idle, at the pertinent time(s). If possible, any potential or anticipated effect on the Project’s progress or schedule that may result in a claim by the Contractor should also be noted contemporaneously with the cause of the effect, or as soon thereafter as possible.

**1.11.04 – Claim Compensation:** The payment of any claim, or any portion thereof, that is deemed valid by the Department shall be made in accordance with the following:

**(a) Compensable Items:** The Department's liability for claims will be limited to the following specifically-identified items of cost, insofar as they have not otherwise been paid for by the Department, and insofar as they were caused solely by the actions or omissions of the Department or its agents (except that with regard to payment for extra work, the Department will pay to the Contractor the mark-ups provided for in Section 1.04.05 hereof):

- (1) Additional Site labor expenses and additional engineering labor expenses.
- (2) Additional costs for materials.
- (3) Additional, unabsorbed Site overhead (e.g., for mobilization and demobilization).
- (4) Additional costs for active equipment.

(5) For each day of Project delay or suspension caused solely by actions or omissions of the Department, either

- (i) an additional ten percent (10%) of the total amount of the costs identified in Sub-Sections (1) through (4) above; except that if the delay or suspension period prevented the Contractor from incurring enough Project costs under Sub-Sections (1) through (4) during that period to require a payment by the Department that would be greater than the payment described in subparagraph (ii) below, then the payment for affected home office overhead and profit shall instead be made, *per diem*, at

- (ii) six percent (6%) of the original total Contract amount divided by the original number of days of Contract time.

Payment under either (i) or (ii) hereof shall be deemed to be complete and mutually-satisfactory compensation for any unabsorbed home office overhead and any profit related to the period of delay or suspension.

(6) Additional equipment costs. Only actual equipment costs shall be used in the calculation of any compensation to be made in response to claims for additional Project compensation. Actual equipment costs shall be based upon records kept in the normal course of business and in accordance with generally-accepted accounting principles. Under no circumstances shall Blue Book or other guide or rental rates be used for this purpose (unless the Contractor had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the Contractor, so long as they are reasonable, shall be used). Idle equipment, for instance, shall be paid for based only at fifty percent (50%) of its actual cost to the Contractor.

(7) Subcontractor costs limited to, and determined in accordance with, Sub-Sections (1), (2), (3), (4), and (5) above and applicable statutory and case law. Such subcontractor costs may be paid for by the Department only (a) in the context of an informal claims settlement or (b) if the Contractor has itself paid or legally-assumed, present unconditional liability for those subcontractor costs.

**(b) Non-Compensable Items:** The Department will have no liability for the following specifically-identified non-compensable items, as well as certain others that may not be specified here:

1. Profit, in excess of that provided for herein.
2. Loss of anticipated profit.
3. Loss of bidding opportunities.
4. Reduction of bidding capacity.
5. Home office overhead in excess of that provided for in Section 1.11.04(a)(5) hereof.
6. Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.
7. Any other consequential or indirect expenses or costs, such as tort damages, or any other form of expense or damages not provided for in these Specifications or elsewhere in the Contract.

**1.11.05 – Required Claim Documentation:** All claims shall be submitted in writing to the Commissioner, with sufficient detail to enable the Department to ascertain the basis and the amount of each claim and to investigate and evaluate each claim in detail. At a minimum, the Contractor must provide the following information and items for each and every claim and sub-claim asserted:

- a. The factual details of the claim, with all dates, locations and items of work pertinent to the claim.
- b. A statement of whether each requested additional amount of compensation or extension of time is based on provisions of the Contract or on an alleged breach of the Contract; a specific identification and explanation each supporting or breached Contract provision, and the reasons why each such provision supports the claim.
- c. Excerpts from manuals or other texts standard in the industry, if available, that support the Contractor's claim.
- d. The detailed circumstances that gave rise to the claim.
- e. The date(s) on which any and all events resulting in the claim occurred, and the date(s) on which conditions resulting in the claim first became evident to the Contractor.
- f. Specific identification of any pertinent document, and detailed descriptions of the contents of any material oral communication, relating to the substance of such claim.

- g. If an extension of time is sought, the specific dates and number of days for which it is sought, and the basis or bases for the extension sought. A critical path method, bar chart, or other type of graphical schedule that supports the extension must be submitted.
- h. When submitting any claim over \$50,000, a written, sworn certification by the Contractor, with the formalities required by the Contract, attesting
  - (1) that supporting data is accurate and complete to the Contractor's best knowledge and belief, and
  - (2) that the amount of the claim and the claim itself accurately reflects what the Contractor in good faith believes to be the Department's liability;

If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

**1.11.06 – Auditing of Claims:** All claims filed against the Department shall be subject to audit by the Department or its agents at any time following the filing of such claim. The Contractor and its subcontractors and suppliers shall cooperate fully with the Department's auditors. Failure of the Contractor, its subcontractors, or its suppliers to maintain and retain sufficient records to allow the Department or its agents to fully evaluate the claim shall constitute a waiver of any portion of such claim that cannot be verified by specific, adequate, contemporaneous records, and it shall bar recovery on any claim or any portion of a claim for which such verification is not produced. Without limiting the foregoing requirements, and as a minimum, the Contractor shall make available to the Department and its agents the following documents in connection with any claim that the Contractor submits:

- (1) Daily time sheets and foremen's daily reports.
- (2) Union agreements, if any.
- (3) Insurance, welfare, and benefits records.
- (4) Payroll register.
- (5) Earnings records.
- (6) Payroll tax returns.
- (7) Records of property tax payments.
- (8) Material invoices, purchase orders, and all material and supply acquisition contracts.
- (9) Materials cost distribution worksheets.
- (10) Equipment records (list of company equipment, rates, etc.).
- (11) Vendor rental agreements
- (12) Subcontractor invoices to the Contractor, and the Contractor's certificates of payments to subcontractors.
- (13) Subcontractor payment certificates.
- (14) Canceled checks (for payroll and vendors).
- (15) Job cost reports.
- (16) Job payroll ledger.
- (17) General ledger, general journal (if used), and all subsidiary ledgers and journals, together with all supporting documentation pertinent to entries made in such ledgers and journals.
- (18) Cash disbursement journals.
- (19) Financial statements for all years, reflecting the Project operations.
- (20) Income tax returns for all years reflecting any Project operations or dealings.
- (21) Depreciation records on all company equipment, whether such records are maintained by the company involved, its accountant, or others.

- (22) If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- (23) All documents that reflect the Contractor's actual profit and overhead during the years that the Project was being performed, and for each of the five (5) years prior to the commencement of the Project.
- (24) All documents related to the preparation of the Contractor's bid, including the final calculations on which the bid was based.
- (25) All documents that relate to the claim or to any sub-claim, together with all documents that support the amount of damages as to each claim or sub-claim.
- (26) Worksheets used to prepare the claim, that indicate the cost components of each item of the claim, including, but not limited to, the pertinent costs of labor, benefits and insurance, materials, equipment, and subcontractors' damages, as well as all documents that establish the relevant time periods, individuals involved, and the Project hours and the rates for the individuals.
- (27) The name, function, and pertinent activity of each Contractor's or subcontractor's official or employee involved in or knowledgeable about events that gave rise to, or facts that relate to, the claim.
- (28) The amount(s) of additional compensation sought and a break-down of the amount(s) into the categories specified as payable under Section 1.11.04 above.
- (29) The name, function, and pertinent activity of each Department official, employee or agent involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.